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CLERK OF COURT

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 450

**ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, ET AL., PETITIONERS,**

vs.

**CITY OF JEANNETTE (PENNSYLVANIA),
A MUNICIPAL CORPORATION, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED OCTOBER 8, 1942.

CERTIORARI GRANTED FEBRUARY 15, 1943.

INDEX

	PAGE
Record from District Court of the United States for the Western District of Pennsylvania:	1
Caption	1
Docket Entries	1
Complaint	3
Answer	16
Transcript of Testimony	22
Testimony of C. R. Hessler	23, 106
A. R. Gundecker	85
John M. O'Connell	92, 99
George Serenco	114
Charles H. Stewart, Sr.	115
Charles E. Walter	129
Thomas Milburn	131
Charles H. Stewart, Jr.	133
Certificate of Official Reporter	134
Certificate of Trial Judge	134
Opinion	135
Discussion and Opinion in Companion case of Reid v. Brookville, 39 F. Supp. 30	139
Decree	143
Certificate of Clerk	146
Record from Third Circuit Court of Appeals	147
Caption	147
Docket Entries	147
Opinion	149
Judgment	170
Designation of Record	171
Order allowing certiorari	174

Docket Entries

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdoch, Jr.,**

v. ²

**City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania)**

**No. 1206
Civil Action**

**Basis of Action: Complaint for interlocutory or preliminary
injunction**

For Plaintiff:

**Hayden C. Covington, 117 Adams St., Brooklyn, N. Y.
Theodore Epstein, Grant Bldg., Pittsburgh, Pa.**

For Defendant:

**Fred B. Trescher, for City of Jeannette,
Kunkle, Walthour & Trescher, Esqs., for John M. O'Con-
nell**

1941

Jan. 11 Complaint filed.

Jan. 11 Summons issued.

**Jan. 11 Notice of filing suit, date for hearing fixed for
January 27, 1941, at 10 o'clock. Motion for Inter-
locutory Injunction filed.**

- Jan. 20 Summons returned served on John M. O'Connell individually and as Mayor of City of Jeannette at Jeannette on Jan. 15, 1941.
- Jan. 20 Injunction returned served on J. O'Connell for City of Jeannette at Jeannette on 1-15-41.
- Jan. 21 Praecipe for appearance of Kunkle, Walthour & Trescher, Esqs. for defendants; filed.
- Jan. 21 Answer of defendants to complaint, filed.
- Jan. 22 Acceptance of service of answer to complaint filed by attorney for plaintiffs.
- Jan. 27 Hearing on Dismissal and Injunction before Gibson, J., C. A. V.
- Jan. 27 Trial Memo. filed: (Filed in 1183 Civil Action.)
- Feb. 21 Hearing on complaint and answer before Gibson, J. Adjourned to Feb. 24, 1941, at 1:30 P.M.
- Feb. 24 Hearing concluded C.A.V.
- Feb. 24 Trial memo filed.
- May 2 Opinion, Findings of Fact, Conclusions of Law and Discussion filed stating that plaintiffs are entitled to a decree.
- May 13 Decree filed and entered permanently enjoining defendants from interfering with plaintiffs and directing defendants to pay all costs.
- July 30 Notice of appeal filed by defendant.
- July 30 Appeal bond filed.
- July 30 Designation of portions of record, proceedings and evidence to be contained in record of appeal filed.
- Aug. 18 Transcript of testimony filed, with order of Court thereon directing that same be filed.

Received and Filed Sep. 11, 1941
 WILLIAM P. ROWLAND, Clerk

Complaint

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF PENNSYLVANIA

Pittsburgh Division

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

TO SAID COURT:

Now come the above named plaintiffs and complain of the above named defendants and for a cause of action would show:

1. Jurisdiction of this suit is based upon existence of a "federal question" irrespective of the amount of money involved, in that this action arises under the Constitution and laws of the United States and involves purely and solely "civil rights" under and by virtue of the Civil Rights Act of 1871 and Section 24 (14) of the Judicial Code otherwise known as 28 U. S. C. A. 41 (14), which confers jurisdiction upon United States District Courts to entertain suits for injunction to redress the deprivation of "civil rights" by persons acting under color of ordinance, law or statute of a state.

2. All the plaintiffs are resident citizens of the Commonwealth of Pennsylvania and of the Federal Western District of Pennsylvania, except the plaintiff LAMBORN, a

resident citizen of the State of Ohio, and plaintiff SEDERS, a resident citizen of the State of West Virginia.

3. Defendant CITY OF JEANNETTE (Pennsylvania) is a municipal corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania.

4. Defendant JOHN M. O'CONNELL is the duly qualified and acting Mayor of said City of Jeannette and is a resident citizen of the Commonwealth of Pennsylvania, and is sued herein individually and as mayor aforesaid.

5. Plaintiffs are Jehovah's witnesses and bring this suit for themselves individually and as a class action for the use and benefit of all Jehovah's witnesses situated in the counties of Westmoreland and Allegheny of the Commonwealth of Pennsylvania, and for all Jehovah's witnesses throughout the entire Commonwealth of Pennsylvania and adjoining states.

6. That Jehovah's witnesses are an unincorporated body of followers of Jesus Christ who are entirely devoted to Him and to His Father, ALMIGHTY GOD, "whose name alone is JEHOVAH," and who are diligent and faithful in carrying out the commands of the Most High God recorded in The Bible, and are not a sect, cult or religion. Each of them is in a covenant with Almighty God to obey His will and by the terms of said covenant they are required to give witness to the name, honor and majesty of ALMIGHTY GOD and His Theocratic Government. Jehovah's witnesses are not a recently organized group but members of that group have been active on earth at all times during more than six thousand years last past.

7. That each of the plaintiffs and all of Jehovah's witnesses are ordained ministers of Jehovah God, and as such they engage in preaching the gospel of God's Kingdom from house to house and publicly upon the streets in every community and district of the State of Pennsylvania and elsewhere, as did Jesus Christ and His apostles in times of old. This work plaintiffs do by means of distributing literature

printed by the Watchtower Bible and Tract Society, Inc., a New York corporation, and the Watch Tower Bible & Tract Society, a Pennsylvania corporation, in the form of books, booklets and periodicals of various titles and issues. These publications are delivered to people at their homes and upon the streets, often as outright gifts and at other times recipients of the publications give small contributions to aid in producing and distributing more like literature, all of which is dispensed for the purpose of enabling the people to conduct private Bible study in their homes, either alone or with friends. The Watchtower Bible and Tract Society, Inc., is a membership corporation of the State of New York, and the Watch Tower Bible & Tract Society is a corporation created, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania. Both of said corporations are charged by law to print, publish and disseminate Bible truths in various languages by means of tracts, pamphlets, books, booklets, periodicals and otherwise recorded messages; one of such periodicals being the semimonthly magazine called "The Watchtower", and another the bi-weekly journal called "Consolation". The purpose of said "Watchtower" magazine is to enable the people to know JEHOVAH GOD and His purposes expressed in The Bible, and the magazine contains Bible instruction specifically designed to aid Jehovah's witnesses and all persons of goodwill toward Almighty God; it adheres strictly to the Bible as authority for its utterances and is entirely free and separate from all religions, parties, sects and other worldly organizations. It is wholly and without reservation for the Kingdom of Jehovah God under His Son Christ Jesus. The "Watchtower" magazine is not dogmatic, but invites careful and critical examination of its contents in the light of the Scriptures. The magazine "Consolation" is a journal of fact, hope and courage, and its columns contain truthful information on current world affairs, showing the relationship between such current happenings and the fulfillment of Jehovah's prophecies recorded centuries ago in the Bible. Very

much of such informative and helpful literature is being constantly produced and distributed by Jehovah's witnesses under direction of aforesaid corporate societies. During the past two decades alone more than three hundred million volumes in almost a hundred different languages have been delivered into the hands of millions of people by Jehovah's witnesses. The wholesome and hopeful message contained in all such literature is based entirely upon the teachings of ALMIGHTY GOD set forth in The Bible. It is a literature unique in this day and age and is not replaced or duplicated by any other literature now being published. This literature is of utmost necessity and usefulness to all thinking persons who desire the way to life, and definitely aids everyone studying it to obtain accurate knowledge of the Creator and understanding of His will expressed in The Bible.

8. That the literature thus distributed by plaintiffs and all others of Jehovah's witnesses relates exclusively to Biblical matters, explaining God-given prophecies recorded centuries ago in Holy Writ and which are now being fulfilled, and showing how, according to The Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy His chief enemy, Satan, and also Satan's entire organization invisible and visible consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon (Revelation 16: 13-16); which destructive act of Almighty God shall be immediately followed by continuing growth and irresistible expansion of God's Government in all the earth, to bring peace, joy, prosperity, happiness and everlasting life to all survivors of that most terrible battle of all time, and eventually also to many who have died in centuries past and who shall by the power of Almighty God be raised from the dead to live upon earth. Contents of said "Watchtower" magazine and kindred publications are, in part, admittedly, a vigorous attack upon ALL RELIGION as practiced today and at all times since man has been upon earth, but ALSO such contents of said publications clearly set forth the true distinc-

tion between *all religion*, on the one hand, and, on the other hand, the true worship or service of Almighty God, thereby exposing religion as a snare and a racket of the very worst kind and proving beyond question that *no religion* is in any way related to or a necessary part of the true worship of Almighty God. That no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and does not in any way interfere with the governments of various nations of earth, in regard to every one of which governments Jehovah's witnesses are strictly neutral.

9. That Jehovah's witnesses have for many years prior to the institution of this suit engaged in distribution of aforesaid literature to residents of aforesaid Allegheny and Westmoreland Counties, including said City of Jeannette, by going from house to house and to pedestrians upon the streets.

10. That on or about the third day of April, 1939, the defendants, acting individually and by and through their agents, servants and employees, for the sole purpose of suppressing the lawful and benevolent activities of plaintiffs and many other of Jehovah's witnesses for whom this suit is brought and to deprive them of liberty to exercise their rights of freedom to worship Almighty God, freedom of speech, press and assembly, did unlawfully cause the arrest of plaintiffs and other persons known as Jehovah's witnesses and thereafter maliciously prosecuted plaintiffs and others for an alleged violation of a municipal ordinance hereinafter described. That on other occasions since April 3, 1939, the defendants have caused the arrest of some of plaintiffs and others of Jehovah's witnesses and threaten to continue to enforce said ordinance in like manner as to plaintiffs and all others of Jehovah's witnesses, and threaten to continue to arrest, maliciously prosecute, vex and harass plaintiffs and others of Jehovah's witnesses and through such enforcement of said ordinance to deprive them of their civil rights and will do so unless stopped by this court.

11. That the ordinance under which plaintiffs and others of Jehovah's witnesses have been arrested and prosecuted for exercising the right of free press, free speech, and freedom to worship Almighty God, is known as Ordinance No. 60 of the City of Jeannette, and which ordinance reads as follows:

"That all persons canvassing for or soliciting within said Borough (now City of Jeannette), orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50, for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding

five (5) days or to the County Jail for a period not exceeding thirty (30) days."

12. That said arrests of Jehovah's witnesses have continued since April 1939 to this date and at present there are pending many cases against the plaintiffs under said ordinance on account of their aforesaid benevolent and lawful activities. That plaintiffs and others of Jehovah's witnesses, although not guilty of any crime or wrong, have been compelled to remain in jail for long periods of time while waiting for bond and perfecting appeal from said wrongful convictions, under filthy, unhealthy and unsanitary conditions. That after being falsely arrested they have been compelled to undergo a mock trial where they were denied their rights of freedom of speech, of press and of worship by said defendant O'CONNELL in the wrongful application to them of said ordinance above described, all contrary to the Federal Constitution, Fourteenth Amendment. Plaintiffs allege that all of said above described prosecutions under said ordinance are a part of a conspiracy between said defendant O'CONNELL and other persons to deprive plaintiffs and others of Jehovah's witnesses of their civil rights secured by the Federal Constitution. In this defendants and their employees act under color of the above described ordinance. That after such convictions by defendant O'CONNELL in his Mayor's Court of the City of Jeannette the plaintiffs have to undergo great burden of expense to appeal from their aforesaid wrongful convictions to higher courts. That they are now unable to continue to appeal and provide counsel for future cases threatened by defendants to be brought against plaintiffs when exercising their constitutional rights in the manner hereinbefore described. That such expense is an unnecessary and unlawful burden cast upon plaintiffs.

13. That the sole facts made the basis of said false arrests and wrongful convictions are that plaintiffs and others of Jehovah's witnesses go from door to door as did the Lord Jesus Christ and His Apostles preaching the gospel of God's Kingdom, The Theocratic Government, by distributing liter-

ature explaining the purposes of Almighty God set forth in The Bible and also distributing such literature upon the streets; publicly, to pedestrians. That plaintiffs and others of Jehovah's witnesses so acting are not peddlers and hawkers but are engaged in the exercise of constitutional rights in a lawful manner. That because of such above facts and because it would be an insult to Almighty God to apply for a permit and because said ordinance does not apply and is unconstitutional and contrary to the Federal Constitution's Fourteenth Amendment when applied to plaintiff's above described activity, plaintiffs and all others of Jehovah's witnesses refuse to apply for a permit to preach the gospel of God's Kingdom as above described and to exercise their constitutional right to engage freely in "press activity".

14. That the above described conduct and threatened conduct of defendants against plaintiffs and others of Jehovah's witnesses constitute violation of plaintiffs' civil rights contrary to Federal statutes, 18 U.S.C.A., sections 51 and 52, and also violation of the "Civil Rights Act of 1871" in that the defendants concerned act under color of law and in a conspiracy to deprive Jehovah's witnesses of their constitutional rights of freedom of speech, of press, of assembly, and freedom to worship ALMIGHTY GOD, by unlawfully arresting and falsely charging and wrongfully threatening to arrest and charge the said Jehovah's witnesses with a violation of the said above described ordinance of aforesaid Pennsylvania municipality.

15. That it is the desire of all of said plaintiffs and all others of Jehovah's witnesses to be free, without molestation from defendants, to worship and serve ALMIGHTY GOD according to dictates of their consciences. That as such ordained ministers of Jehovah God plaintiffs and all others of Jehovah's witnesses cannot cease preaching the gospel, being firmly bound under terms of their covenant with Almighty God to preach thus until 'the cities are desolate' and for failure to do so they shall suffer everlasting destruction at the hand of Almighty God, according to His sure Word

written at Acts 3:22,23; Ezekiel 33:8,9; Isaiah 6:9,11. That Almighty God in His written Word has specifically commanded such preaching to be done by plaintiffs and others of Jehovah's witnesses among the people of every place in this land, including all the aforesaid communities of Westmoreland and Allegheny Counties and other counties and communities thereof in the entire Commonwealth of Pennsylvania, during the lifetime of said Jehovah's witnesses. That plaintiffs have from time to time organized groups of Jehovah's witnesses to visit communities like the aforesaid municipality of Jeannette and to call upon all residents at their homes and distribute aforesaid literature from door to door and also to pedestrians on the public streets. That such groups are composed of Jehovah's witnesses from many parts of the State of Pennsylvania and adjoining states.

16. That plaintiffs are entitled under the laws and Constitution of the United States to thus distribute literature from door to door and on the streets in aforesaid municipality, according to opinions delivered by the Supreme Court of the United States in three separate cases brought against Jehovah's witnesses in the States of Georgia, New Jersey, and Connecticut, respectively. That plaintiffs apprehend that defendants will perform their threats and will continue to arrest and prosecute Jehovah's witnesses and otherwise induce and permit continuation of false arrests, malicious prosecution and similar deprivation of civil rights of plaintiffs under the aforesaid ordinance. That performance of such threats will greatly damage and injure Jehovah's witnesses as is hereinafter shown.

17. That the above described ordinance of said City of Jeannette is unconstitutional and void as construed and applied by defendants against plaintiffs because as so construed and applied each of the provisions of said ordinance has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their "civil rights" of freedom of speech, of press and of assembly,

and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1.

18. That by reason of aforesaid conduct on the part of defendants the plaintiffs and others of Jehovah's witnesses have been interfered with and frustrated in the exercise and enjoyment of their constitutional rights to distribute literature on the streets and from door to door by the defendants' greatly hindering and stopping the above described work of Jehovah's witnesses in said municipality. That defendants' acts and threatened acts above described have produced and will produce great and irreparable injury and loss to plaintiffs and all others of Jehovah's witnesses by depriving many of them of their means of livelihood, which is solely preaching the gospel, and by depriving many others of their rights of free speech, free press, free assembly and freedom to worship and obey the written commands of ALMIGHTY GOD; all of which constitutes gross and flagrant violation of plaintiffs' civil rights.

19. Plaintiffs and all others of Jehovah's witnesses say that they are without adequate remedy at law and that the trespasses of defendants above described are continuous. That only a suit for injunctive relief will stop such unlawful conduct of the defendants and it is only by injunctive process of this court that plaintiffs can enjoy, exercise and practice their "civil rights" of free press, free speech, freedom of assembly and freedom to worship Almighty God publicly, and it is necessary that such injunctive relief hereinafter asked be granted so as to properly and adequately protect plaintiffs and all others of Jehovah's witnesses in their exercise of these rights. The granting of an injunction herein will prevent a multiplicity of suits and actions at law in which said plaintiffs cannot be adequately protected, and will prevent the above described disgraceful, unlawful, totalitarian, Nazi, and un-American conduct on the part of defendants and restore said defendant municipality to its due and proper status as a community within the United

States of America and prevent such municipality's being run and controlled in a tyrannical and Nazi manner.

20. That there is nothing in the faith of the plaintiffs or in their practices based upon that faith, or in their preaching and publishing, that is contrary to the public morals or that injuriously affects, in any way, the public health, safety, morals or welfare; and the work of said plaintiffs individually, under direction of said Watchtower corporations, is done benevolently, in the public interest, unselfishly, and without any commercial objective on the part of either the plaintiffs collectively or individually or the said Watchtower corporations, is done solely to convey to the people the said beneficial message of the Kingdom of ALMIGHTY GOD in obedience to His written commandment and is done solely to perform actual worship of ALMIGHTY GOD in spirit and in truth.

21. Plaintiffs show that in order to prevent continued abridgment of their aforesaid rights, pending a final hearing of this cause, it is necessary that this court grant and issue a temporary restraining order or preliminary injunction (to become permanent on final hearing) against said defendants, their officers, agents, servants and employees as hereinafter prayed for.

WHEREFORE

plaintiffs move the court to grant and issue an interlocutory or preliminary injunction, after notice to the defendants, restraining each of the above named defendants, their officers, agents, servants and employees, from enforcing the ordinance aforesaid as to plaintiffs and all others of Jehovah's witnesses, and from arresting and prosecuting plaintiffs and others of Jehovah's witnesses on account of their activity in distributing said books, booklets and periodicals within aforesaid municipality, and plaintiffs further pray that this Court, upon a consideration of this bill of complaint, order the application for a preliminary injunction or temporary restraining order above prayed for and contained herein, to

be set down at a fixed time and place for hearing before this Court; and that notice issue unto each of the defendants, commanding them to appear at such time and place and show cause, if any they have, why the preliminary or temporary restraining order restraining defendants, their officers, agents, servants, and employees, from enforcing said ordinances as to plaintiffs and others of Jehovah's witnesses on account of their activity in distributing aforesaid literature should not be granted as prayed for by plaintiffs. Plaintiffs further pray that upon a final hearing this Court enter an order declaring said above described ordinance invalid and void under the Fourteenth Amendment to the Federal Constitution to which said ordinance is contrary and repugnant as construed and applied to plaintiffs' activities, and also declaring said ordinance void on its face because of vagueness and indefiniteness, and because it has been so construed and applied and will be so construed and applied by defendants to deprive plaintiffs and others of Jehovah's witnesses of their right to exercise and enjoy freedom to worship ALMIGHTY GOD in accordance with the dictates of conscience, and their "civil rights" of freedom of speech, of press and of assembly. Plaintiffs further pray that said preliminary injunction be made permanent upon a final hearing, restraining the defendants, their officers, agents, servants and employees from enforcing said ordinance as to plaintiffs and others of Jehovah's witnesses and from arresting and prosecuting plaintiffs and others of Jehovah's witnesses on account of activities aforesaid in distributing books, booklets and magazines. Plaintiffs further pray for such other and further relief as they may show themselves justly entitled to in the premises.

HAYDEN COVINGTON

Attorney for Plaintiffs

117 Adams St., Brooklyn, N. Y.

TELEPHONE Triangle 5-1474

Designation

I, HAYDEN COVINGTON, Attorney for Plaintiffs in the above entitled cause, HEREBY DESIGNATE Theodore A. Epstein, Attorney and Counselor of this Court, whose address is Grant Building, Pittsburgh, Pennsylvania, to receive process and all notices required to be served upon me under rules of this Court:

HAYDEN COVINGTON

THEODORE A. EPSTEIN
Attorney for Plaintiffs

ALBERT R. GUNDECKER
as Plaintiff

COMMONWEALTH OF PENNSYLVANIA, County of Allegheny, ss:

Albert R. Gundecker, being first duly sworn upon his oath, deposes and says that he is plaintiff in the above entitled cause, that he has read the foregoing bill of complaint which he has signed as plaintiff, that the facts stated therein and all exhibits included therein are true of his own knowledge, except as to such statements therein as are made on information and belief, and as to such statements he believes them to be true.

ALBERT R. GUNDECKER
Affiant

Subscribed and sworn to before me
this 11 day of January, 1941.

ELSIE FRITSCHÉ

Deputy Clerk

Answer to Complaint**UNITED STATES DISTRICT COURT**

WESTERN DISTRICT OF PENNSYLVANIA

Pittsburgh Division

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

The defendants, City of Jeannette, a municipal corporation, and John M. O'Connell, individually, and as Mayor of the City of Jeannette, by way of answer to the plaintiffs' complaint, say:

1. The defendants deny the existence of a federal question, and deny that the complaint states any cause of action arising under the Constitution and laws of the United States, and deny that the same involves purely and solely civil rights under and by virtue of the Civil Rights Act of 1871 and Section 24 (14) of the Judicial Code, otherwise known as 28 U.S.C.A. 41 (14), and aver that the District Court is without jurisdiction, and respectfully pray that the action be dismissed.

2. The averments of the second paragraph of the complaint are admitted.

3. The averments of the third paragraph of the complaint are admitted.

4. The averments of the fourth paragraph of the complaint are admitted.

5. Defendants deny the right of the plaintiffs to maintain said action either as individuals or as a class action.

6. Defendants know nothing about the religious beliefs or activities of Jehovah's Witnesses, and deny the materiality of the same, and aver that at least some of the plaintiffs have in the past engaged in the purely commercial enterprise of hawking and vending and peddling from door to door in the City of Jeannette, certain books and merchandise which are sold by members of the group at a profit which ranges as high as four hundred per cent.

7. Defendants deny the materiality of the averments contained in the 7th paragraph, and aver that insofar as the activities of the plaintiffs or members of their groups have been confined to the activities set forth in the 7th paragraph they have not been and will not be interfered with in the City of Jeannette.

8. The averments contained in the 8th paragraph are denied, and on the contrary the defendants aver that most of the literature either passed out or sold by the plaintiffs and their group is a groundless defamatory and libelous condemnation of all religious organizations other than their own as racketeers. The defendants particularly deny that no part of the contents of such literature advocates overthrow of government by force or violence or by unlawful means, and deny that the same does not interfere with the governments of various nations on earth, but aver on the contrary that some of the plaintiffs openly advocate resistance to establish laws of Pennsylvania and set up a code which they regard as supreme for the laws of the United States or any of its States.

9. The averments contained in the 9th paragraph are denied, and defendants aver that at least some of the plaintiffs and their group have in the past engaged in the purely commercial activity of selling books and merchandise from door to door in the City of Jeannette.

10. Defendants deny that they, either individually, or by or through their agents, servants and employees, and for the purpose of suppressing the lawful and benevolent activities of the plaintiffs, and many other of Jehovah's witnesses, and to deprive them of liberty to exercise their rights of freedom to worship Almighty God, freedom of speech, press and assembly, have caused the arrest of the plaintiffs and other persons, known as Jehovah's Witnesses, and aver on the contrary that some of the leaders of the plaintiffs have sought, by intimidation and threats, to prevent the enforcement of lawful ordinances of the City of Jeannette.

11. Defendants admit that paragraph 11 quotes the portions of Ordinance No. 60 of the City of Jeannette under which some of the plaintiffs have been arrested, and aver that the provisions of said ordinance and the evidence upon which some of the plaintiffs were convicted under said ordinance, have been passed upon and approved by the Court of Quarter Sessions of Westmoreland County, Pennsylvania, the Superior Court of Pennsylvania, and the Supreme Court of Pennsylvania. The defendants further aver that the Supreme Court of the United States has also inferentially approved said ordinance as a lawful exercise of the police power of the City of Jeannette and approved the evidence under which some of the members of Jehovah's Witnesses have been convicted by refusing to grant a certiorari (Commonwealth v. Stewart, No. 722 Oct. Term 1939 in the Supreme Court of the United States). The defendants deny that they have ever arrested or prosecuted the plaintiffs, or any other persons, for exercising the right of free press, free speech and/or freedom to worship Almighty God.

12. The averments contained in paragraph 12 are denied as stated. The defendants deny that "many cases are pending against the plaintiffs under said ordinance", but admit there are some cases awaiting argument and decision in the Superior Court of Pennsylvania and in the Quarter Sessions Court of Westmoreland County, but aver that said cases will be reached and disposed of in their proper order

as will all other cases. Defendants deny that the plaintiffs or other member of Jehovah's witnesses were arrested and convicted when not guilty of any crime or wrong, and deny that they were compelled to remain in jail for long periods of time while waiting for bond and perfecting appeals from wrongful convictions under filthy, unhealthy and unsanitary conditions, and aver on the contrary that the plaintiffs and other members of this group were extended many more courtesies than their own conduct warranted. Defendants deny that the plaintiffs were ever falsely arrested or compelled to undergo a mock trial or that they were denied their rights of freedom of speech, of press, and of worship by the defendants, or either of them, in the wrongful application of said ordinance, and aver on the contrary that both the ordinance and the evidence upon which some of the members of Jehovah's witnesses were convicted has been upheld by the Supreme Court of the United States. Defendants deny that the plaintiffs, or any of them, have undergone any burden of expense, and aver on the contrary that all the expense of defending any actions brought against members of Jehovah's witnesses for selling literature of the Watch Tower Bible & Tract Society is borne and paid by said Publishing Company.

13. The averments contained in paragraph 13 are denied. Defendants aver, as hereinbefore more particularly set forth, that members of Jehovah's Witnesses have been and will be arrested only for hawking and peddling without permits in violation of the law.

14. Defendants deny that the plaintiffs are now or ever have been threatened with being unlawfully arrested or falsely charged with any offense.

15. Defendants deny that the plaintiffs or other members of Jehovah's Witnesses have any desire to be free without molestation from the defendants to worship and serve Almighty God, and on the contrary aver that what they desire is free advertising and publicity, and the right to vend and sell the publications of the Watch Tower Bible and

Tract Society in plain violation of the laws.

16. Defendants admit the right of the plaintiffs to distribute literature from door to door and on the streets of Jeannette and have been protected and defended in this right even to the extent of permitting members of Jehovah's witnesses to pass out untrue and defamatory literature concerning the defendant, John M. O'Connell, and concerning the Courts of Westmoreland County. The defendants deny that the plaintiffs apprehend or have any basis for apprehending any false arrest, malicious prosecution or deprivation of any of their civil liberties.

17. Defendants deny that Ordinance No. 60 of the City of Jeannette is unconstitutional either as written or as construed and applied by the defendants against the plaintiffs, and deny that it has ever been or will be used to deny the plaintiffs and other members of Jehovah's witnesses their civil rights of freedom of speech, or press, of assembly, and freedom to worship Almighty God.

18. Defendants deny that the plaintiffs and other members of Jehovah's witnesses have been interfered with and frustrated in the exercise of any of their constitutional rights.

19. Defendants deny that they, or either of them, have ever trespassed upon any of the plaintiffs' rights and deny that they are without an adequate remedy at law, and aver on the contrary that every conviction of any members of Jehovah's witnesses has been promptly appealed to a proper tribunal.

20. The averments contained in paragraph 20 are denied, and on the contrary it is averred that much of the literature of the Watch Tower corporations is defamatory and libelous and calculated to incite breaches of the peace. The defendants further aver that it has been in the past and will be in the future concerned only with the commercial activity of the plaintiffs or members of their group.

21. The defendants aver further that equitable relief should be denied the plaintiffs for the further reason that

they and their superiors have been and are distributing and spreading false and defamatory literature; that counsel for Jehovah's witnesses have in the past attempted to distort and falsify records of cases on appeals from convictions; that they and their superiors have in the past, by intimidation and threats, sought to interfere with the orderly enforcement of the laws of the City of Jeannette; that they and their superiors have constantly and persistently flouted and interfered with the rights of citizens of Jeannette to be free in their homes from interference and annoyance of unwelcome and unwanted rude and insolent purveyors of libelous literature, and they and their superiors have denied to others the right of religious freedom which they so stoutly claim for themselves.

WHEREFORE, the City of Jeannette and John M. O'Connell, as an individual, and as Mayor of said City, respectively pray that the complaint of the plaintiffs be dismissed.

FRED B. TRESCHER

Solicitor for City of Jeannette

KUNKLE, WALTHOUR & TRESCHER

Attorneys for John M. O'Connell

Transcript of Testimony

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Robert L. Douglas, et al, Plaintiffs,

v.

No. 1206
Civil Action

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette (Pennsylvania)

HARRIET COLE THOMAS

Official Reporter

467 Union Trust Building
Pittsburgh, Pa.

Filed August 18, 1941
G. H. BERGER, Clerk

And now, Friday, February 21, 1941, at 10:00 o'clock A.M.,
the above entitled cause came on for hearing before Hon.
Robert M. Gibson, Judge, at Pittsburgh, Pennsylvania.

COUNSEL PRESENT:

For the Plaintiffs:

HAYDEN C. COVINGTON, Esq.
117 Adams Street, Brooklyn, N. Y.

THEODORE EPSTEIN, Esq.

For the Defendants:

F. B. TRESCHER, Esq.

CHARLES R. HESSLER, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q Kindly state your name, sir.

A Charles R. Hessler.

Q Where do you live?

A Coaraopolis.

Q How long have you lived here in the Commonwealth of Pennsylvania?

A Five years; I was born here, but recently I have been here for five years in this district.

Q Before you moved to Pennsylvania the last time, where did you live?

A New Jersey.

Q And were you born and raised here in Pennsylvania?

A Yes, I was.

Q Which is now your home, Pennsylvania, at present?

A Yes.

Q What is your profession or occupation, Mr. Hessler?

A I am an ordained minister of Jehovah God.

Q Are you connected with Watchtower Bible and Tract Society?

A Yes; I am a representative of Watchtower Bible and Tract Society in the capacity of zone servant.

Q Will you kindly explain to the Court what Watchtower Bible and Tract Society is? What is its work?

A Watchtower Bible and Tract Society is a corporation incorporated for the purpose of disseminating Bible truths in various languages by means of publications, of tracts, books, booklets, pamphlets, and other religious documents that the Board of directors may deem expedient from time to time.

Q Now, explain who Jehovah's witnesses are and their connection with the Watchtower Bible and Tract Society.

A Jehovah's witnesses are Christian men and women, who are wholly and entirely devoted to the service of Almighty God and have covenanted with Him to serve Him and do His will and to follow in the footsteps of Jesus, and the Watchtower Bible and Tract Society is used by these Christian men and women as publishers to assist them in disseminating Bible truths to the people.

Q How long have you been connected with the Watchtower Bible and Tract Society, and how long have you been one of Jehovah's witnesses, in that capacity?

A I have been one of Jehovah's witnesses twenty-three years; I have been a representative of the Watchtower Bible and Tract Society for over twenty years.

Q You say your position now is that of zone servant?

A That is right.

Q How long have you been connected with the Society, in that capacity?

A Since about 1938 as zone servant.

Q And before that did you have any other connection with the organization, in the local company here in Pittsburgh?

A Prior to that time I was company servant of the Pittsburgh company of Jehovah's witnesses.

Q Now, will you kindly explain to the Court the nature of your duties, and in detail your connection with Jehovah's witnesses and the Society in your capacity of zone servant?

The Court: Aren't we getting a little out of the line of inquiry, Mr. Covington? After all, the only question here is whether these ordinances encroach upon constitutional rights.

Mr. Covington: I was just leading up to that, to show his connection with this particular case and how he comes to know the facts.

The Court: All right: Limit it to that effect as a preliminary. Go ahead.

Q Would you kindly explain the nature of your duties as zone servant?

A Well, the Jehovah's witnesses throughout the earth are organized into groups or companies, where they co-operate one with the other in order to take to the people information concerning God's kingdom in printed form, and this they endeavor to do in an efficient and orderly manner. And to assist them in carrying on this work in such a manner zone servants have been appointed to visit these various groups from time to time and to render such assistance that this work may be carried on in such thorough manner that every home in the communities in which those witnesses work may be visited regularly at least three or four times a year and the people given an opportunity to receive this information concerning God's kingdom.

Q Now, are there companies in Westmoreland County, Pennsylvania, of Jehovah's witnesses?

A Yes. In Western Pennsylvania there are companies in the vicinity of Westmoreland County and in Allegheny County cover that community.

Q Now, do you have supervision, as zone servant, over the activity of Jehovah's witnesses in Westmoreland County?

A Yes.

Q Including the city of Jeannette?

A Yes.

Q Would explain how the work of Jehovah's witnesses has been carried on in the past in the city of Jeannette, before this trouble came up? In what manner do they carry it on—from door to door?

A Jehovah's witnesses visit the people in the different communities at regular intervals. They call upon them with the message of the Kingdom in printed form. They use phonographs to present that message in addition to

the printed books and booklets, pamphlets; and they encourage and stimulate home Bible study by inaugurating group Bible studies.

Q Now, are Jehovah's witnesses ordained ministers of the gospel?

A Yes.

Q Each one?

A They are.

Q Will you kindly explain the nature of the ordination and the reason therefor, and what its connection is with door-to-door work?

A When a Christian—when a man or woman consecrates themselves to do the will of God they enter into a covenant relationship with Him. In 1st Peter 2: 21 is stated the fact that Jesus left them an example to follow in his footsteps—

The Court: Now, just let us stop. We are getting clear out of line. If he wants to explain how their literature, and so forth, is disseminated, and so on, that is all right; but we are not particularly interested in the religious feature of it, it is the constitutional right that you appeal to here, that is in question here.

Mr. Covington: Now, I would like to make this observation, for the benefit of the Court. The defendants contend that the plaintiffs are required under the law to secure a permit. Now, one of the reasons that the plaintiffs assert that they are not required to secure a permit is because they are ordained ministers of Jehovah God and of the gospel.

The Court: I know, but how about rendering unto Caesar the things that are Caesar's—incidentally, in that connection?

Mr. Covington: Well, we will get to that, too.

The Court: Well, we will not hear it, Mr. Covington. You must stick to the one question. You have come here and have attacked these ordinances, as you have a perfect right to do—claiming, of course, that they infringe

upon your constitutional rights. Now, we will assume for the purposes of this case that Jehovah's witnesses, in so far as they are concerned, are perfectly sincere in their beliefs and have a right to maintain those beliefs in a legal way. The only question we are interested in is with respect to these ordinances, and we do not want to get a lot of matter in the record in connection with the religious feature, because we are not interested in this suit in it.

Mr. Covington: Now, may it please the Court, we assert that this statute, as construed to apply, deprives the plaintiffs and all other Jehovah's witnesses of their right of worship of the Almighty God under the Constitution: and in order to prove that, I submit respectfully that we have a right to offer proof to show wherein the right of worship of the Almighty God has been denied them, and it is necessary to explain and show that they are ordained ministers of Jehovah God; and to exclude that character of evidence from the record would, to my estimation, be error, and if it is excluded it would, to my estimation, amount to a denial of that right. It would take only a few minutes, no one would be injured by it, and I submit it is material for that reason.

The Court: I suppose the best way out of it, to save time, is to "give you your head". Go ahead.

Mr. Covington: It is not merely a question of saving time, because I think it is very material.

The Court: I don't think it is at all, because you are appealing to a civil right, the right of Jehovah's witnesses and everybody else. Jehovah's witnesses have just as much right as any other citizen and no more.

Mr. Covington: That is absolutely the truth, and we don't ask for any more than that either.

Q Now, we will ask Mr. Hessler to state briefly how and wherein Jehovah's witnesses are ordained ministers of Jehovah God and of the gospel of God's Kingdom, and the connection that that has to their doing of the work

from door to door as such ordained ministers.

A. Well, having covenanted to do the will of Almighty God and follow the footsteps of Jesus, they are thereby commanded to do the same kind of work that Jesus did, that is, preach the gospel of God's Kingdom. Jesus said the gospel of God's kingdom would be preached, must be preached, in all the world; and therefore they are commissioned and anointed and ordained as ministers of Almighty God. And that ordination is found in Isaiah, 61st chapter, first and second verses. And Jesus and the apostles went from door to door, from village to village, preaching the gospel of the Kingdom; and Jehovah's witnesses do the same. We are living in a modern age, and we do this work quickly and efficiently with our books and booklets in various languages, some eighty-three languages.

Q. And why are the books employed instead of conversation?

A. In order to save time and enable the people to at their leisure find in the Bible the things they should know at this particular time.

Q. I will ask you: The activity of Jehovah's witnesses in Jeannette has been under your direction, has it not, Mr. Hessler?

A. Yes.

Q. Do you know of your own knowledge the nature and how the activities were pursued in Jeannette?

A. In bringing it down to this case; in March nineteen—1939, in March, the 12th or the 19th—but anyway, it was in March, 1939, there was some of Jehovah's witnesses going about their work—

Q. In what way?

A. In Jeannette, visiting the home and exhibiting to them messages of the Bible in printed form, and they were arrested and interfered with. Well, in order to cover that community, another group went in there on April 2d—

Q Now, just before we get to that, Mr. Hessler, do you know the defendant John M. O'Connell?

A Yes, I do.

Q How long have you known him?

A Ever since March and April, 1939.

Q And how did you come to get acquainted with Mr. O'Connell?

A Well, when those Jehovah's witnesses were arrested in March, 1939, I attended the hearing.

Q Now, subsequently to that did you direct—or rather, did Jehovah's witnesses go back to Jeannette for the purpose of preaching the gospel of God's Kingdom as you have described?

A Yes, they did.

Q Now, before they went there, did you contact Mayor O'Connell?

A In order to clear up any misunderstanding that might have existed in the minds of the police officials and of Mayor O'Connell, we delivered a letter to the chief of police and the mayor, explaining the nature of our work, so that there would be no misunderstanding.

Q And identifying the individuals that were coming into town that day?

A Yes.

Q Will you kindly look at that document that I show you (handing paper to witness), and I ask if you have ever seen that, or the original thereof?

A Yes; I delivered the original letter to the chief of police and also gave the copy, after the chief refused to accept it, to Mayor O'Connell.

(Said paper marked Plaintiffs' Exhibit No. 2)

Q Will you kindly explain to the Court what happened on the occasion of the delivery of that letter?

A We delivered the letter to the chief of police, and he became very angry when he found that Jehovah's witnesses were again visiting the people in Jeannette. He said we would have to go out, round them all up and stop,

or they would all be arrested. We showed him the letter; he didn't want to accept it. We read the letter to him, because the letter very clearly explains the work, why we are there, gives the Scriptural citations given to Christians, and he stated then we would have to see Mayor O'Connell. We visited Mayor O'Connell's home, he was on his way to the police headquarters, the municipal building, at the time; and we returned there also. We gave the letter to him. The letter was discussed. The mayor stated that we were acting in a defiant manner; we explained we were not doing so, we had come there in an orderly way, and we had brought this letter to clear up the misunderstanding or misapprehension that he was laboring under that we were peddlers and hawkers, and explained to him that we had brought over a hundred people into the community that day, in order that the homes might all be visited quickly; and if he would just refrain from interfering in two or three hours the community would all be done. He stated that many people were calling up and phoning and complaining, and we suggested that he follow the same example they do in other communities—invite the one who is making the complaint to come down and sign the complaint, and bring forth evidence that a violation of the ordinance is being made, and the responsibility would then be upon that individual. We also called his attention to the fact that the Supreme Court ruled that the manner in which Jehovah's witnesses were doing this work was perfectly valid; that we had no objection to the ordinance as a commercial ordinance, but we did object to the misapplication of the ordinance to the work that we were doing. And then he stated, after a conference with the chief and several others, that we would have to either take out a permit or he would order the arrest of every one in Jeannette.

Q And that in spite of the proof that you had submitted to him in the form of this letter?

A Yes.

Mr. Covington: Would the Court like to have me read the letter now?

The Court: Oh, no, not now. It will be in evidence; the Court will read it in due time.

Q Now subsequently, Mr. Hessler, of your own knowledge, what happened in Jeannette? Were anybody picked up—arrested?

A Yes, there was twenty-one arrested that day. They were given a trial, eighteen of which—or three of them were released, because they were sitting in automobiles; but there was only evidence against one defendant where a money contribution had been received, and the man that testified—

Mr. Trescher: If the Court please, this is objected to. The record of what transpired in that case is the very best evidence of what occurred there.

The Court: Yes, this is not the best evidence. They were arrested and there was a hearing.

Q They were arrested and subsequently tried and convicted. Is that right?

A That is right.

Q And that case was appealed to the Quarter Sessions Court and appeal denied. Is that right?

A Appeal was denied.

Q And then appeal was taken from that order of denial to the Superior Court, and that appeal was dismissed, was it not?

A That is right.

Q On account of the failure to have attached to the original appeal papers a certified copy of the transcript?

A That is right.

Q And the case went to the Supreme Court of the Commonwealth and was refused?

A Yes, sir.

Q And then from there to the Supreme Court of the United States, and certiorari denied. Is that right?

A Yes.

Q And subsequently, Mr. Hessler, to April, 1939, have there been any other arrests of Jehovah's witnesses in Jeannette, under this ordinance?

A Since April, 1939?

Q Yes.

A Yes, there have been other arrests made. Last February, a year ago, there were a number of arrests. Those cases have been appealed and no action has been taken on that appeal.

Q Not as yet. Now, do you know how many persons all together have been arrested in and about Jeannette under this ordinance?

A There has been over thirty arrests, and there has been a number—fifteen or more—interfered with, taken in to the police headquarters and investigated and then let go.

Q Now, Mr. Hessler, the only thing that is distributed by Jehovah's witnesses in Jeannette is booklets and books. Is that correct?

Mr. Trescher: Well, let him say what was done. This manner of questioning is objected to, if the Court please.

The Court: Yes, it is leading.

Mr. Trescher: It is for the Court to conclude whether books were distributed or sold, and we feel the record should show exactly what was done, if this witness is capable of testifying.

Mr. Covington: All right—withdraw it.

Q Mr. Hessler, I show you a book entitled "Enemies". Have you ever seen that book before?

A Yes.

Q Who prints that book?

A Watchtower Bible and Tract Society.

Q Who distributes it?

A Jehovah's witnesses.

(Said book marked Plaintiffs' Exhibit No. 3)

Q I show you a book entitled "Reconciliation". Have you ever seen that book before?

A Yes; published by the Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

(Said book marked Plaintiffs' Exhibit No. 4; and additional books marked respectively Plaintiffs' Exhibits Nos. 4 to 10, inclusive; also group of pamphlets and papers marked Plaintiffs' Exhibits Nos. 11 to 36, inclusive)

Q I show you the book entitled "Religion", being Plaintiffs' Exhibit No. 5, and ask you who prints that?

A Watchtower Bible and Tract Society.

Q And who distributes it?

A Jehovah's witnesses.

Q I show you Plaintiffs' Exhibit No. 6, entitled "Yearbook of Jehovah's witnesses for 1941", and ask you who prints and distributes that.

A Watchtower Bible and Tract Society; and Jehovah's witnesses distribute it.

Q I show you Plaintiffs' Exhibit 7, book entitled "Salvation", and ask you who prints that.

A Published by Watchtower Bible and Tract Society and distributed by Jehovah's witnesses.

Q Plaintiffs' Exhibit No. 8, entitled "Riches". Who prints and who distributes that?

A Published by Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

Q Book of "Government", Plaintiffs' Exhibit 9?

A Published by Watchtower Bible and Tract Society and distributed by Jehovah's witnesses.

Q And book entitled "Preparation", Plaintiffs' Exhibit 10?

A Printed and published by Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

Q I have a booklet "Satisfied", being Plaintiffs' Exhibit 11; booklet "Conspiracy Against Democracy", being Plaintiffs' Exhibit No. 12; booklet "Judge Rutherford Uncovers Fifth Column", being Plaintiffs' Exhibit No. 13; booklet entitled "Refugees", being Plaintiffs' Exhibit No. 14; booklet "Government and Peace", being Plain-

tiffs' Exhibit No. 15; booklet "Fascism or Freedom", being Plaintiffs' Exhibit No. 16; booklet "Face the Facts", being Plaintiffs' Exhibit No. 17; booklet "Protection", being Plaintiffs' Exhibit No. 18; booklet "Theocracy", being Plaintiffs' Exhibit No. 19; booklet "Who Is God?", being Plaintiffs' Exhibit No. 20; booklet "What Is Truth?", being Plaintiffs' Exhibit No. 21; booklet "Cause of Death", being Plaintiffs' Exhibit No. 22; booklet "The Final War", being Plaintiffs' Exhibit No. 23; booklet "Health and Life", being Plaintiffs' Exhibit No. 24; booklet "Home and Happiness", being Plaintiffs' Exhibit No. 25; booklet "Good News", being Plaintiffs' Exhibit No. 26; booklet "Where Are the Dead?", being Plaintiffs' Exhibit No. 27; booklet "His Works", being Plaintiffs' Exhibit No. 28; booklet "Angels", being Plaintiffs' Exhibit No. 29,—and I ask you who prints these particular exhibits?

A They are printed by the Watchtower Bible and Tract Society and distributed by Jehovah's witnesses.

Q I show you Plaintiffs' Exhibit No. 33, being "Consolation" of February 19, 1941; Plaintiffs' Exhibit No. 32, being "Consolation" of January 22, 1941; Plaintiffs' Exhibit No. 31, being "Consolation" of May 29, 1940; Plaintiffs' Exhibit No. 30, being "Kingdom News", October 1940; Plaintiffs' Exhibit No. 36, being "Watchtower", January 15, 1941; Plaintiffs' Exhibit No. 35, being "The Watchtower", February 1, 1941; and Plaintiffs' Exhibit No. 34, being "The Watchtower" of February 15, 1941,—and ask you who prints and distributes those particular exhibits?

A They are printed by the Watchtower Bible and Tract Society, and distributed by Jehovah's witnesses.

Q Now, except for the "Yearbook, 1941", has that particular kind of literature been distributed in Westmoreland County?

A Yes.

Q And in the city of Jeannette?

A Yes.

Q On the date of April 2, 1939, that was in what you call the "Watchtower Campaign"—is that correct—the way you explained it to me?

A That was a campaign of Jehovah's witnesses covering Jeannette and Greensburg and other communities in Westmoreland County.

Q And at that time you were offering the public—distributing the books "Fascism or Freedom"—and "Face the Facts". Is that correct?

A Yes.

Q That is, Plaintiffs' Exhibits Nos. 16 and 17?

A That is right.

Q Now, in a general way, can you for the record, in order that the record may intelligently show how those witnesses carry this work on, or would you demonstrate to the Court and to counsel how this door-to-door work is carried on in Jeannette?

A The home is visited, the bell is rung or a knock at the door, and a person comes to the door, and when he comes to the door is told that "I represent the Watchtower Bible and Tract Society"—or the statement is made "I am one of Jehovah's witnesses"—"and we have some very important information for you"—

Mr. Trescher: If the Court please, it seems to me this is going a little far afield. I am certainly willing to go to great length, as we have in the past, and allow all the latitude in the world, but the question here—as the Court has already indicated—is whether this ordinance itself in any way infringes the constitutional rights of these individuals, or whether the City of Jeannette is enforcing it in such a way as to infringe their rights. And how can a zone manager, a man who was not present when these arrests were made, know exactly what was done? The record of those convictions in the cases where there were convictions, and of the dismissal in the cases where there were dismissals, is the best evi-

dence of what was done; and I don't see we are going to help or derive any particular benefit by hearing this record. I have heard it before, and the Court has, too.

Mr. Covington: That is not the one that was played the other day. This is the one that was played in the Watchtower Campaign to those who were interested at that time. This is the way or manner of presentation. They say the facts constitute a sale, a commercial activity—

The Court: That I think is the most material phase of the inquiry here, but the trouble is the inquiry has been about everything else.

Mr. Covington: That is what we are getting down to right now.

The Court: Go ahead.

Mr. Covington: I think he has intelligently outlined the nature of this work. Now, here is the transaction that led up to these arrests, and it is for the Court to determine whether it comes within the provision of this ordinance.

The Court: I will admit it, subject to the objection and exception.

A (Continuing)—The person that answers the door is told that "I am one of Jehovah's witnesses"—

The Court:

Q You have seen this yourself?

A Yes; I have done that.

Q All right.

A (Continuing) We state we have very important information for them, and it will only take a few moments for them to hear it. (Witness plays record on portable phonograph which he has produced)

(Said phonograph record marked Plaintiffs' Exhibit No. 37).

Q Mr. Covington:

Mr. Hessler, at the conclusion of the presentation of that record, what does the witness next do?

A At the conclusion of the playing of the record the person is asked how they enjoyed it, and then a card is handed to the person to read, explaining how they may obtain "The Watchtower", which is published twice a month, twenty-four issues a year, and they have been given the opportunity at that particular time to receive a year's subscription for a contribution of a dollar, together with any one of the volumes free. If they didn't care to take "The Watchtower" at that time, their attention is called to the fact that any one of the bound volumes can be secured on contribution of twenty-five cents.

Q That is, any one of these bound volumes there, Exhibits Nos. 3 to 10?

A All except the book "Religion". If they didn't care for that, their attention was called to some of the booklets, and they were left, if they desired to contribute, three for ten cents; and on that particular occasion five cents for one of the small booklets; and if they still were interested—or rather, if they were interested, and had no money, we would gladly give them a free copy, and we endeavored to leave a copy at every home.

Mr. Trescher:

Q Do I understand Mr. Hessler purports still to be testifying to matters that are within his personal knowledge, as he told the Court with reference to that record?

A Yes.

Q You are?

A Yes.

Q Very well.

Mr. Covington:

Q Now, that is the way the work is carried on in Jeannette. Is that correct?

A Yes.

Q During the Watchtower Campaign. Now, how was the work carried on that particular morning of April 2d, in reference to these two booklets that were being dis-

tributed?

A By putting forth a special effort to leave a copy of the "Face the Facts" and "Fascism or Freedom" booklets in every home. And those who did not care to contribute could have the copy free, if they desired to read it.

Q That is, these Exhibits 16 and 17.

A Those who desired to hear the phonograph record would be given the opportunity to do so.

Q Now, you directed the activities in Jeannette at that time. Is that correct?

A Yes.

Q You were not personally present, were you, when the eighteen were arrested—or the twenty-one were arrested?

A I was at Jeannette at the time.

Q Now, they were arrested for the presentation of these two booklets—

Mr. Trescher: Now, just a minute. Tell us when this was.

Mr. Covington: April, 1939.

A April 2, 1939.

Q That is the morning they were presenting these two booklets alone, without the phonograph record.

Mr. Trescher: If the Court please, the record is the best evidence of what they were arrested for, what they were charged with, and what testimony was produced. This person could not have been personally present when eighteen people carried on their activities, as he testifies they did carry them on.

Q Did you see them when they were brought into the police station?

A I was at the police station when they were brought in—when some of them were brought in.

Mr. Trescher: We would like to renew our objection, if the Court please.

The Court: Well, as we have it thus far there is nothing in yet.

Q Now, at a later date there were some more arrests following that, some eight others later on?

A Yes; in 1940, February 25, 1940.

Q At that time how were the Jehovah's witnesses—were they using a different record at that time than the one entitled "Snare and Racket"?

A They were using the "Snare and Racket".

Q Now, why did not Jehovah's witnesses apply for a permit on either one of these occasions?

A Because, inasmuch as they are doing this work in obedience to the explicit command of Almighty God, of preaching the gospel of the Kingdom, to ask for a permit to do what someone has commanded would be an insult to the Creator, as His Law is supreme and above all human law.

Q Did this letter to Mayor O'Connell explain why you did not apply for a permit, mentioning the fact that you were ordained ministers?

A Yes, sir: very explicit.

Q And for that reason did not come within the terms of the ordinance. That is in the letter you delivered to him?

A Yes.

Q Did you ever have any conversation with Mayor O'Connell after either one of these arrests, as to his continued enforcement of this ordinance as to Jehovah's witnesses?

A Yes, sir, I did.

Q How many times have you talked with the Mayor about that?

A I have carried on conversation on several occasions.

Q Now, what if anything did the Mayor say about the enforcement of that ordinance as to Jehovah's witnesses in the future?

A I can't remember his exact words—

Q Well, in substance.

A (Continuing)—but he always gave me the impression that the ordinance was valid and they would continue to

enforce it as long as Jehovah's witnesses distributed literature in Jeannette and accepted a contribution.

Q And accepted a contribution for any of the literature distributed. Is that correct?

A Yes.

Q And did he say anything about anybody found in Jeannette in the future doing that work would be arrested?

A He emphasized the point that the ordinance would be enforced and they would be arrested.

Q Now, what effect, if any, has this had upon the activity of Jehovah's witnesses in Jeannette and that area in Westmoreland County?

A It has not only affected the work of Jehovah's witnesses, it has curtailed it but it has intimidated people of goodwill who reside in Jeannette; they are afraid to accept any of the literature, for fear that they would be reproached and misrepresented.

Q Have any such persons refused—

Mr. Trescher: It seems to me, if the Court please, that the testimony is far afield. It ought to be confined to some particular instance.

The Court: The only thing—I agree with you in large part, but this is not a case tried before a jury, and I think you will just have to trust the Court to get "the wheat from the chaff" at the end of the case, remembering exactly what the issues in the case are. I agree with you we are getting pretty far afield, but I will allow it; and rule on your objection later, of course.

Q Now, has the company of Jehovah's witnesses at Jeannette diminished, as the results of this?

A The company of Jehovah's witnesses in Jeannette has been dissolved for several years.

Q And has the number of Jehovah's witnesses in Jeannette diminished?

A And some of those who resided there have moved from the community, because of the reproach that has been heaped upon them and because of the activities of the

Jehovah's witnesses having been carried there and the continued arrests.

Q Now, you have had personal charge of the defense of all of these cases, that is, the employment of lawyers and the payment of fees and everything, have you not?

A Yes.

Q In these Jeannette cases, under this Ordinance No. 60?

A That is right.

Q Do you know how much has been paid out on account of these various cases that have been filed under this ordinance?

A Yes; it has cost Jehovah's witnesses in this vicinity at the present time over seventeen hundred dollars in legal costs and other printing expenses pertaining to the printing of briefs, and so on.

Q And the employment of stenographers, court stenographers, and so forth, in the defense of these cases?

A Yes, sir.

Mr. Trescher:

Q Do you have a record of that?

A I have a memorandum of it.

Q Do you have reference to Jeannette cases?

A Jeannette cases alone.

Mr. Covington:

Q Did you attend the trial of the eight that were arrested after the April arrests—that was in February, 1940?

A Yes.

Q Before Mayor O'Connell?

A Yes.

Q What literature was then being distributed and made the basis of the prosecution?

A The book "Salvation" was being presented.

Q At that time, Mr. Hessler, were the eight convicted then under the ordinance?

A Yes.

Q That is all.

CROSS EXAMINATION

Mr. Trescher:

Q Mr. Hessler, by whom are you paid?

A I receive \$25 a month from the Watchtower Bible and Tract Society toward incidental expenses; the rest of the money that I use in the way of living expenses I contribute myself.

Q And do you receive your money from the Watchtower Bible and Tract Society in the form of a check each month?

A Each month, if that is necessary; sometimes it is not necessary.

Q By whom are you employed?

A I am in the service—my time is entirely devoted to the service of Almighty God.

Q Who designates you as the zone manager?

A The Watchtower Bible and Tract Society.

Q And who in the Watchtower Bible and Tract Society designates you as the zone manager?

A Their Service Committee.

Q And where does the Service Committee meet?

A In Brooklyn, New York.

Q And when you speak of the Service Committee, do you refer to the committee that would correspond to the board of directors in another corporation?

A Well, it would be the group who passes on the qualifications of Christian men—

Q Well, tell me, Mr. Hessler, to what particular individual you are responsible?

A I am not responsible to any particular individual at all.

Q Well, with whom do you have your communications with the main corporation?

A The Watchtower Bible and Tract Society.

Q Is there some individual in connection with that that directs your work?

A The Zone Department, in charge of the zone servants.

Q The Watchtower Bible and Tract Society is a huge corporation, isn't it?

A Well, it is a large corporation.

Q Do you know the name of the individual that directs your work?

A Instructions are not signed by any individual. The names of individuals are subordinated in all the activities of the Watchtower Bible and Tract Society, as are Jehovah's witnesses. Letters of communications are not signed by any individual.

Q Are your checks signed by any individual?

A Yes.

Q Who is the individual that signs your checks?

A W. E. Van Amburg.

Mr. Covington: V-a-n, one word—A-m-b-u-r-g.

Q And where is the principal office of the Watchtower Bible and Tract Society?

A 117 Adams Street, Brooklyn, New York.

Q Does anyone else sign your checks?

A And N. H. Knorr—K-n-o-r-r.

Q Do you mean to tell this Court that the sum of \$25 a month is all that you receive as remuneration for your work?

A I don't even always receive \$25 a month from the Watchtower Bible and Tract Society; sometimes it is not necessary. But I am allowed the maximum of \$25 a month toward incidental expenses, and I don't always accept that.

Q You didn't answer my question, Mr. Hessler. I asked you whether that is all the remuneration you receive in connection with your work with Jehovah's witnesses?

A From the Watchtower Bible and Tract Society.

The Court:

Q He is not asking you that. Listen to the question. (Question read)

A Well, from time to time when I receive contributions

from any of the literature that I leave with the people, there is a differential between the amount contributed by me for those books and the amount I receive from the people.

Mr. Trescher:

Q All right. And what is that differential, Mr. Hessler?

A On the bound volumes it is five cents; the differential is twenty cents.

Q In other words, every book that you receive from the Watchtower Bible and Tract Society you pay or give them five cents. Is that right?

A That is right.

Q And when that book is distributed to a home—"distributed", as you call it—and you exact what you call a contribution from the person to whom you distribute it, the contribution that you exact is twenty-five cents, is it not?

A I don't exact it. We give the person with whom we are presenting the information the privilege of contributing twenty-five cents, but if that person would like to have that book, for which I contribute five cents—if they would like to have it and are unable to pay, I gladly give it to them free. As a matter of fact, I give more books and booklets away than I receive a contribution for.

Q Well, as a matter of fact, when you get contributions—and I think the records of these cases show that none of your salesmen parted with books without getting contributions—but when you do get contributions, the contribution that you ask for is twenty-five cents, is it not?

A We have a set contribution from the public, a stipulated contribution, of twenty-five cents, but the person who is presenting it is free to give it to them without any contribution, if they so desire.

Q Do you have any record, Mr. Hessler, as to how many books per month you get from the Watchtower Bible and Tract Society on those terms?

A Yes, I do have a record.

Q Where is that record?

A I don't have it here.

Q And can you tell the Court how much your profits average per month from the distribution of these books?

A Yes.

Q How much?

Q About—because of the much time that is required by me to assist Jehovah's witnesses in this community, on account of the many arrests that have occurred, the amount of contributions that I have received for literature run between two, three, four dollars a month, and the profit of that would be much less than that.

Q You mean the total?

A Yes.

Q Do you mean to say that you live on twenty-five dollars plus the four dollars of contributions that you say you get?

A No, I didn't intimate that or state that. I stated that the amount of money that is used for my living expenses I use out of my own personal fund.

Q Well, I think you still haven't answered my question, Mr. Hessler. What I want to know is how much remuneration you receive from all sources for what you call the distribution of the literature of the Watchtower Bible and Tract Society.

A Well, as I stated, the maximum amount in any one month that I receive from the Watchtower Bible and Tract Society toward incidental expenses has been \$25 a month, and the contribution—

Q How much do you receive from all sources from your connection with Jehovah's witnesses—

A From time to time I have gasoline furnished me for operating a car, but the amount of contribution that I receive from literature, as I stated before, between two, three, four dollars a month.

Q All right. How much do you receive from all sources?

Q Well, not more than probably \$40 a month at the maximum.

Q You have no other occupation?

A No; devoting all my time to this work.

Q And you have done that for twenty years.

A I have not devoted all my time to that; I have devoted the last five years exclusively to this.

Q And you have no home, that is, you don't own a home in this vicinity?

A I have a trailer, I own a trailer.

Q And you live there, and you have a family, I believe?

A Yes.

Q And you mean to say that all of your activities, operating your automobile and traveling to these various places, your living expenses do not cost you more than forty dollars a month?

A I did not say that.

Q You didn't say that?

A No; I said that is what I receive, the maximum. The rest of the money necessary for me to operate my car and pay my living expenses I use from my own personal fund.

Q Do you mean to say that you are independently wealthy?

A No, I didn't say that.

Q And that you have an income that is independent from your income from Jehovah's witnesses?

A No, I didn't say that. I stated I have used it from my personal fund, money that I had when I was working at secular work.

Q You don't mean to tell the Court here you have enough of a personal income to keep you?

A I am not telling the Court anything. I am just answering your questions.

Q In other words, you don't want the Court to know how much money you are getting from Jehovah's witnesses, do you?

A No, I am being very frank and telling you, and for the

Court's information, that the amount of contributions is away below what it costs me to live, that the money I use for living expenses comes from my own personal fund—

Q All right. Where is this personal fund that you have? Is it in a bank?

A Some of it, yes.

Q Well, what bank is it in?

A Well, some of it is in the Peoples Trust Company.

Q Where?

A In Pittsburgh.

Q Do you have a savings account there?

A Yes.

Q You mean—

A Checking account.

Q A checking account there as well. And that belongs to you personally?

A Yes.

Q And you have derived none of it from your work in connection with Jehovah's witnesses?

A No, sir, not a bit.

Q Not a cent of it. And do you have any income from that account?

A No, I do not.

Q That is, it doesn't bear interest?

A No.

Q And how long have you had that account?

A Ever since I have been in Paterson—or Pittsburgh.

Q And you have been a zone operator for twenty years, haven't you?

A No, I have been a zone servant since 1938, but I have been associated with the Watchtower Bible and Tract Society as one of Jehovah's witnesses for over twenty years.

Q And as one of Jehovah's witnesses, you were engaged in the sale of this literature?

A The distribution of this literature.

Q What you call the distribution. And that has been your only income for over twenty years; hasn't it?

A No, I didn't state that; I said I have devoted all my time for the last five years. Prior to that I was in the laundry business for twenty-three years.

Q Where was that?

A In Paterson, New Jersey.

Q And you left that and devoted—

A And devoted all my time to the service of Almighty God.

Q You say you have a checking account in the Peoples Trust Company, Pittsburgh?

A Yes.

Q And that has no income?

A No.

Q And that you have no income from your connection with Jehovah's witnesses other than the \$40 a month?

A That is the maximum; in fact, it isn't four dollars a month.

Q And does that cover all expenses in connection with your activities?

A No, not at all; it doesn't begin to.

Q It doesn't begin to. Now how much does it cost you to carry on all your activities in connection with Jehovah's witnesses?

A Well, anywhere from \$60 to \$85 a month.

Q All right. Where do you get that money?

A From my personal fund.

Q From money that belongs to you?

A Yes, certainly, from money that belongs to me.

Q And from money that was not derived from your connection with Jehovah's witnesses?

A Money that I worked and earned, worked with my hands and earned.

Q Before you became a worker in connection with the Jehovah's witnesses?

A Well, I have been continuously engaged in connection with Jehovah's witnesses. While I was engaged in the

laundry business I was a company servant and used my time and my energy working, passing out this information to people of good-will that were interested.

Q So that there may be no misunderstanding about it later, you say that the maximum that you receive from all of your activities in connection with Jehovah's witnesses, whether from the Watchtower Bible and Tract Society, or from distribution—as you call it—of literature, or from companies which the Watchtower Bible and Tract Society maintains, is \$40 a month?

A In fact, it is less than that. When I was giving it to you I was being elaborate.

Q That is the maximum?

A That is right.

Q And that has been the maximum for the past five years?

A Two years past; two years.

Q Prior to that time did you get more?

A No; I was using my own money entirely, but inasmuch as zone servants were inaugurated in 1938, and there were certain traveling expenses recognized as necessary, an allowance was made of \$25 a month.

Q Now then, the Watchtower Society—or Corporation—does maintain companies in this vicinity, does it not?

A Yes.

Q And some of them are incorporated. What companies exists in your zone?

A There are about nineteen of them.

Q And what do those companies pay for the literature of the Watchtower Society?

A The books are shipped to them, and when they leave them with the public they remunerate the Watchtower Bible and Tract Society for a volume at twenty cents.

Q What does the company get out of it?

A The publishers are allowed—there is a difference of five cents, because it is recognized the publishers give many of them away, and that money is used—

Q All right. Just tell me what the company gets out of it?

A Well, in some cases they get five cents, and then in other cases they don't get that; they give it—the publishers get it.

Q Well, again I must ask that you answer the question. How much does the company get out of it?

A In most cases they just get the twenty cents that they return to Brooklyn; in a few cases, where the publisher instead of contributing the twenty cents for the books they contribute the whole twenty-five cents; but those are only in a few instances, where they have some operating expenses, like renting a hall, and so they voluntarily contribute those five cents, in order to defray those various expenses.

Q These various companies keep records, don't they?

A Yes.

Q The Watchtower Bible and Tract Society doesn't send these books out without knowing where the money is coming from?

A They ship them on consignment.

Q On consignment, yes. So that these books are distributed sometimes to the companies on consignment?

A Yes.

Q And then the company makes its contributions to the Society after the books are turned over and after a contribution is exacted from the person who in turn distributes them to homes—isn't that right? And the person who goes to a local company and takes out so many books may also charge his contribution, may he not—that is, he doesn't have to have the money right there, he can get credit for his contribution, as you call it?

A That is right.

Q And after he goes out and disposes of these books and receives contributions from the people in the homes, he then takes that money and discharges that—I don't know whether you call it a debt or not, but what we would ordinarily call a debt—

A An obligation.

Q (Continuing)—An obligation, yes—by paying over the money?

A And he does that if he gives the book away, he discharges the obligation just the same.

Q So that the only substantial difference between what you do and what the ordinary merchant does is that you call the thing a contribution or a distribution, while the ordinary merchant calls it a sale. That is right, isn't it?

A You wouldn't call it a sale—

Q I know you wouldn't call it a sale; but that is the only difference? It is a matter of terminology, as far as you are concerned?

A We are leaving them with the people for a contribution in order that they may have a share in publishing similar books, to help some other people get the information.

Q You don't mean to say when you were in Jeannette in 1939 your agents or representatives played this record "Instruction" or "Miracles", which you have presented here in court and identified as Exhibit No. 37?

A No,—

Q You did not?

A Some of them had that, not all of them.

Q You don't mean to say that was played in Jeannette, do you?

A Well, I assume—they were endeavoring to play it.

Q You told the Court a while ago you knew it was played, you stood there and observed it. You don't know whether this record was played or not?

A No, the Court asked me, and I understood the Court to ask me if that was the method we employed; we were demonstrating to the Court the method we used in Jeannette, and at that time we had a campaign for the "Watchtower", and some of the Witnesses were using phonographs, they carried phonographs in the car, and if they had the opportunity to use it they used it.

Q And you don't know whether this record "Instruction"

was played or not, do you?

A I know that they were—an effort was made to play it, because they had the opportunity.

Q Mr. Hessler, you know the record they were playing out there was called "Religion as a Snare and Racket"—or some such record?

A Yes; in February, 1940; that is the record that was used, yes.

Q And how about April, 1939?

A We were not using that record.

Q You were not using a record?

A We were not using that record, "Snare and Racket".

Q Now, this phonograph you furnished here in court, who provides those for the various representatives who work at the doors of the people?

A The Watchtower Bible and Tract Society.

Q They are not supplied at the sole expense of the Watchtower Bible and Tract Society, are they?

A For any worker that wants them, for a contribution of \$8.

Q Yes, the worker making a contribution.

A That is, the publisher that uses it makes the contribution.

Q And anyone who wants to be an ordained minister, and take these books from door to door, to exact contributions for them, may be an ordained minister, may he not?

A Only providing he has made a covenant of consecration to do the will of Almighty God and has a desire to follow in the footsteps of Jesus and preach the gospel of His Kingdom, we are glad to assist them.

Q Well, you are authorized to ordain ministers, aren't you? That is part of your work?

A I beg your pardon?

Q I say, you are authorized to ordain ministers, aren't you?

A No, I am not.

Q. You are not?

A. An ordination comes from—one receives their ordination from Almighty God, and men who recognize that an individual has made a consecration to follow in the footsteps of Jesus, and devote his life to the service of the Lord, why, the Watchtower Bible and Tract Society, on recommendation of company servants and zone servants, will recognize that individual as one of Jehovah's witnesses, fully qualified to present the message of the Lord to the people, and to that end we give them all the assistance that we can.

Q. These cards, of which one has been exhibited by you, bear nothing but the typewritten name there, in addition to your own signature. Is that right?

A. That is right.

Q. You mean to say you had to meet with some particular qualifications with the Society in New York before you got that card?

A. Yes; I had to give them assurance that I had consecrated to do the will of Almighty God and to follow in His footsteps.

Q. Don't they send them out to you with the books?

A. They send them out to the companies only for the company servants and zone servants to supply to men and women who have given assurance that they have consecrated themselves and have a desire to serve as a Christian in taking this information to the people.

Q. And either you or the company types in the name of the individual who wants one of those cards?

A. That is right.

Q. And then you sign your own name at the bottom of it?

A. We do that so we can be identified to the police departments, if they request that credential.

(Card just referred to marked Plaintiffs' Exhibit No. 38)

Q. Now, of what does a company consist, Mr. Hessler?

A. Well, it can consist of two or three Christian men and

women. The Lord says, "Where two or three are gathered together in My name, I will admit and place them." And it can consist up to two hundred; and if it gets over two hundred it is recommended that it be divided, so they can carry on the work more efficient.

Q So that at any time you have two or three people, that constitutes a company?

A Well, not necessarily; we don't have any companies that small. We do have in Westmoreland County around ten or thirteen; we started them at five. And then they grow.

Q And is there some way that they are officially designated as a company?

A Yes, they—some individual of that group—

Q Makes application?

A (Continuing)—makes application that they would like to organize as a group or company of Jehovah's witnesses.

Q And once they are organized into a company, then they get credit with the Watchtower Bible and Tract Society and may obtain literature?

A Yes.

Q And may obtain it for a particular price, or a particular contribution?

A Yes.

Q Whether it is paid or whether it is sent to them on consignment?

A Yes.

Q Now, you told the Court there was a company in Jeanette.

A At one time.

Q When was that company organized?

A I don't know when it was organized, but before I came to Pittsburgh.

Q When did you come to Pittsburgh?

A 1936.

Q And when was that company dissolved?

A Well, it was consolidated with the Pittsburgh company.

It was consolidated with the Pittsburgh company about 1936 or '37, and then later when another subdivision of the Pittsburgh company was made those who resided there were put into the supervision of the Duquesne company, and the Duquesne company now functions.

Q So that, there has not been a company of any kind in Jeannette since 1936, or at the very latest 1937. Is that right?

A That is correct.

Q And that was at least two years before any of these arrests were made, that company was gone, as far as Jeannette is concerned?

A It was consolidated with the Pittsburgh company.

Q Tell me, who made up the company when you had one in Jeannette?

A Well, there was a man by the name of Caldwell.

Q Give me his full name.

A I forgot what his first name was.

Q Well, where did he live?

A He lived on Route 30.

Q Well, Route 30 is not in Jeannette, is it?

A Well, he was part of that group.

Q Who has the records showing this company?

A Well, I have the records in the office.

Q Where is the office?

A Over at 1807 Brighton Place.

Q In Pittsburgh?

A In Pittsburgh.

Q And who has charge of those records?

A Well now, I will have to qualify that, as far as—We have the names of those who were associated with that group, some of them; but just who would have charge of those records now, I don't know.

Q Well, who has charge of that office?

A Well, they would be under my supervision, any of those names of the former company. The Duquesne company now at the present time would have the names and ad-

dresses of those who would be interested that reside in Jeannette at the present time.

Q I want to know where the records are of any company that ever existed in Jeannette.

A Well, the original records of those companies, or of anyone ever interested in Jeannette, would be in the Brooklyn office. The Brooklyn office could give me that information.

Q Do they have the records?

A I presume they do; I couldn't say whether they do or not.

Q How do you know there ever was a company in Jeannette, if you don't know about these records?

A When I came down to Pittsburgh I was informed there used to be a group in Jeannette, and I went out and visited.

Q Now, you told me about the consolidation of the Jeannette company with the Duquesne company?

A That is right.

Q How do you know about that?

A I was informed that that company was made part of the Pittsburgh company.

Q Then you don't really know it at all, do you?

A Yes.

Q And you don't know there are any records in your office?

A Yes; I went out there and visited those people.

Q Does Jehovah's witnesses, or the Duquesne company, maintain a bank account of any kind in this community?

A I don't know—without looking at my records, I couldn't state whether the Duquesne company does or not. Some of them do and some don't. If they are large enough and have sufficient money to warrant a bank account, they keep a bank account. But some of the smaller companies don't; and whether the Duquesne company have or not, without looking at my records I can't tell.

Q Which is the company at 1807 Brighton Place?

A That is my permanent address.

Q Is that your business address?

A The Allegheny company have their address at 1807 Brighton Place.

Q That is your permanent business address?

A That is my permanent business address.

Q What records do you keep there?

A Well, I get my mail there.

Q Well, do you have any records of purchases and sales of literature?

A The Allegheny company would have.

Q Well, are you in charge of the Allegheny company?

A No; I just assist them, to see the work is done in an orderly way.

Q All right. Does the Watchtower Bible and Tract Society, of which you are the manager, maintain any records there?

A No, they don't maintain any records; but the Allegheny company themselves maintain records.

Q All right. Now, you told the Court a few minutes ago there were some records there, and that these records of these particular people in Jeannette ought to be there.

A No; I qualify that.

Q What records are there you were referring to?

A Just let me explain the answer. At the time the consolidation of the Jeannette company was made with the Pittsburgh company it was all one great big Pittsburgh company; today there are four or five units in Pittsburgh, they were separated. When I made the statement that the records of the former Jeannette company were at our office, we had our office at 907 Middle Street, and it was all one company; but since then the change has been made; and I desire to qualify that, because the Allegheny company does not have jurisdiction over the Jeannette territory. That is now covered by the company at Duquesne, and the names of the interested persons that reside in Jeannette would be held by the Du-

quesne company; they would have the records of the interested persons.

Q All right. Now, where is the office of the Duquesne company? That is what I want to know.

A 1108 Crawford Avenue, Duquesne.

Q And who has charge of the records?

A George Serenco—S-e-r-e-n-c-o.

Q And you have seen the records there. Is that right?

A I know that he has records there. I wouldn't state that I have seen the records concerning Jeannette, but I know their company has the records, yes.

Q How do you know he has the records?

A Well, I visit their company from time to time.

Q Well, have you seen them?

A I have seen the records, yes. That is his home, and when I have seen them they have been in the hall at Duquesne Library.

Q In where?

A The Duquesne Library—Carnegie Library in Duquesne.

Q And are they required to keep a record of all the names?

A They keep a record of all the persons who are interested, yes.

Q Well, do they keep a record of all the ordained ministers?

A Yes.

Q And all the companies that are formed?

A Yes.

Q Do they keep a record of the books that are purchased and sold?

A They keep a record of that, yes.

Q Now, when your group first came to Jeannette, in the latter part of March, you had several talks with the Mayor?

A Yes.

Q He undertook to get you to comply with the regulations there, told you what the ordinance was and what the requirements were?

A He informed me of the ordinance, yes.

Q And you told him you weren't going to comply with it?

A I didn't tell him in that manner. I called his attention to the fact that we appreciated they had a commercial ordinance but that ordinance did not apply to the work that was being done by Jehovah's witnesses.

Q You told him that?

A Yes; and I called attention—

Q And he, after all, was the mayor of the city?

A Yes; and I called his attention—in fact, gave him a copy of the Supreme Court decision in the Lovell case, showing that the Supreme Court had reached it did not apply to this work.

Q And you did tell the Mayor, after he had arrested a few persons and after appeals had been taken and were then pending in the Quarter Sessions Court of Westmoreland County—you did tell the Mayor you were going to bring a crowd in there that his police force couldn't possibly cope with, didn't you?

A No, I didn't tell him that.

Q Well, as a matter of fact, didn't you on the following Sunday come into town with a force of between one and two hundred people?

A I think, if you will check the names on that list, there were probably a little over a hundred.

Q As a matter of fact, weren't there over two hundred?

A No.

Q You did set up headquarters just at the edge of town, didn't you?

A Right outside the city limits.

Q There were many automobiles in that group, weren't there?

A About twenty-five.

Q And you used a parking lot in the vicinity of Oakford Park?

Q And you then set up headquarters nearby, didn't you?

A I was there.

Q Well, did you set up headquarters nearby?

A Well, you could call it headquarters.

Q Did you rent a room?

A No.

Q Did you have the use of a telephone?

A A public telephone at a gas station.

Q You did use that headquarters, and the people who were in the group were supposed to call you there. Is that right?

A If they had any interference.

Q If they had any interference. And they did call you; they had interference?

A Yes.

Q And you went there expecting it, didn't you?

A Well, we expected it, from what Mayor O'Connell said.

Q He told you they were going to enforce the ordinance?

A He told me they were going to enforce the ordinance.

Q And as the result of that day's activities some twenty-one were arrested. Is that right?

A Yes.

Q And you gave bond for all of them?

A Yes.

Q And you were in charge there. You didn't go out and watch these people, what they were doing from door to door?

A I knew the method of work they were doing.

Q But you didn't see what they were doing, did you?

A Every individual, no.

Q And you attended the hearing the following day?

A Yes.

Q And as a result of the testimony that was offered there, there were some seventeen, I believe, of them—

A Eighteen.

Q (Continuing)—eighteen convicted; and after they were convicted you again posted bond and a petition for allowance of an appeal?

A That is right.

Q And you refused, in connection with that appeal, to have attached to the appeal a transcript of the record in the Mayor's court, did you not?

A No, we didn't refuse. In fact,—

Q Well, you didn't do it?

A Well, that was an error on the part of the attorney that we had at that time.

Q When that matter came before the Quarter Sessions Court, the City objected because you had not attached a copy of the ordinance and had not attached a copy of the transcript. Was that not a fact?

A Well, that was an error on the part of the attorney, because he was following a practice and not according to rule of law.

Q You were present when that case was argued, weren't you, Mr. Hessler?

A Yes.

Q And you knew we objected at that time because you had refused and failed—

A No, no objection was made at that time, at the time of the appeal—there was no objection made at the time of the petition for appeal, because we still had time—If that had been the sole objection, we still had time to request the Mayor to furnish a transcript of the case, and attach it to the orders.

Q But your appeal was refused?

A That excuse wasn't used until the matter went before the Superior Court.

Q And you then petitioned for a reargument, didn't you? Is that right—that appeal was refused?

A Yes.

Q And you petitioned for a reargument before the Court of Quarter Sessions?

A Yes; on the basis we—

Q And you still did not attach a copy of the ordinance or a copy of the transcript?

A We tried on several occasions to get a copy of the tran-

script from the Mayor at a later date, and were refused.

Q You wanted to get before the Court your own version of facts, and you didn't want the version of the facts as they appeared before the Mayor?

A No; that has not been our custom. In all cases we have only been too anxious to lay our case on the table, so that the Court can get a clear conception of just the method that we use and what we were doing and how we were doing it at the time; but in that particular—

Q You then went to the Superior Court?

A Just a moment. Let me clear it up.—

The Court (to witness): Oh, we can't go into too much argument. You are here for cross examination, and you are supposed to answer his questions.

Q You did go to the Superior Court?

A Yes.

Q And you did not attach a copy of the transcript there, did you?

A Well, I didn't prepare the petition for appeal, and I couldn't say whether it was attached or not.

Q And so it was not until you got into the Supreme Court of the United States with an application that you did finally insert in the record a transcript of the proceedings in the Mayor's Court?

A That is right.

Q And a transcript of the ordinance?

A That is right.

Q I show you the Defendants' Exhibit "A", we will call this—I have only my bound volume of the record in this case, if the Court please—

The Court: Of course, if it is not certified, I don't know—we cannot admit it, unless counsel examine it and look it over and agree to it.

Mr. Covington: We have no objection to your introducing the entire thing.

Mr. Trescher: We would like to introduce the entire thing.

Mr. Covington: Well, we are willing for you to introduce the whole thing.

The Court: I am afraid you will encumber the record, if you ever need a record. We will allow you to read into the record anything that may be material to this inquiry, but we don't want you to introduce a book of that size.

Mr. Trescher: If the Court please, I quite agree it ought not to be written into the record, and I don't know that we need to go into all phases of it. But the thing the Court is concerned with here, if there is anything material there, whether there has been any infringement or any violation of civil rights, of course the very best evidence of that is the record itself. And while I don't think it needs to be introduced or written into this particular record, it is about the most compact way we can present it to the Court. I feel that the other side ought to be confined to the record, if they are going to charge a violation of civil rights.

The Court: By that particular record? I don't understand the position of the complainants here to base it upon that, but upon the threats to enforce the ordinance and that the ordinance itself is really the object of attack.

Mr. Trescher: Well, if that is the purpose, it seems to me, the Supreme Court has passed upon the ordinance, it has been passed on by the Superior Court of Pennsylvania—

The Court: Well, you can read that into the record; but to go up on appeal and have to put the whole thing in would be too bad.

Mr. Trescher: I quite agree with you. And, of course, I am referring only to the record in the Supreme Court. (Said bound book marked Defendants' Exhibit "A")

The Court: And let it be known that you are referring only to certain parts.

Mr. Trescher: In referring to Exhibit "A" we are

referring only to transcript of the record in the Supreme Court of the United States at No. 722 October Term, 1939, and the petition for writ of certiorari at the same number and term; the reply of the City of Jeannette to the petition for writ of certiorari in the same case; the motion for writ of certiorari to correct diminution of record, in the same case; and the reply of the respondent City of Jeannette to the motion for a writ of certiorari to correct diminution of record, in the same case.

Mr. Covington: Are you going to offer all that to have it ultimately typed into the record, counsel?

Mr. Trescher: No, I haven't offered it at all yet; I just asked the witness.

Mr. Covington: I don't know whether he knows anything about those or not. He didn't handle the case; he is not a lawyer. I mean, you and I can get together—we know the record ourselves, inasmuch as we handled it together as attorneys. If you will just tell me what you want to introduce of that, I might be able to agree to it, without wasting all the time wrangling with the witness.

Mr. Trescher: What I want to ask him about particularly at the present time is the statement of facts which he presented to me, and which he presented to the Mayor, and which he requested the Mayor and I sign, in connection with that appeal to the United States Supreme Court; and I should like to ask him whether he has a copy of that.

Mr. Covington: Well, I don't know whether he has a copy, but we will agree you can use that; it is printed in there.

Q You did, after that appeal was taken and before the record was made up, present a statement which you called an "Agreed Statement of Facts", didn't you, and ask us to consent to it?

A. I believe so.

Q And in that you asked us to certify to the Court that all

of the defendants had testified, didn't you?

A Just what was in that statement I wouldn't be able to say yes or no until I read it.

Q Wasn't that one of the things you wanted us to agree to?

A Well, I just said I would have to read it before I could say yes or no to what is in it, now. My mind is a little hazy now, just what was in it?

Q Do you remember any of the other things that might have been in that "Agreed Statement of Facts"? Did you want the Mayor to certify a record had been played when it actually hadn't?

A On that particular time, I don't know just what we had in that record.

Q You don't recall that at all?

A But we wanted the Mayor to agree to the method of work that was being used by Jehovah's witnesses in Jeannette at that particular time, present all the facts to the Court.

Q In other words, in presenting this case to the Supreme Court, you wanted us to agree to some things that had not been done at all, didn't you?

A No. We wanted to give the Court the complete picture of the method employed by Jehovah's witnesses, so that they could see whether or not it came under that ordinance.

Q But you wanted us to agree to a lot of things that had not actually been done at all, didn't you?

A Well, I don't actually recall just what was in that letter.

Q You don't recall?

A We wanted the Mayor and counsel to agree to give the higher court a complete picture of what method we were using.

Q At any rate, after that case was returned I believe these people voluntarily—well, they at first refused to pay their fines, and then voluntarily submitted themselves to jail. Is that correct?

A They submitted themselves to jail.

Q And then made an application for a writ of habeas corpus, and that was refused by the Court, and there is now, in connection with that Commonwealth vs. Stewart, and associated cases, resulting from the arrests in April of 1939, an appeal pending in the Superior Court of Pennsylvania?

A Yes.

Q From the refusal of a writ of habeas corpus in connection with the persons who had voluntarily submitted themselves to jail after refusing to comply with the order. Is that correct?

A That is right.

Q Now then, you have spoken of a number of arrests that occurred I believe in February of 1940. There was a complete stenographic record made up of all the testimony that was offered in that case, wasn't there, and the persons who were convicted filed appeals there?

A That is right.

Q And you, in charge of those particular appeals, requested that the decision of the cases resulting from the February, 1940, arrests be held up until the Superior Court had had an opportunity to again pass on the questions raised at the habeas corpus hearing arising out of the arrest of the people in 1939, did you not?

A Well, there wasn't a habeas corpus at that time.

Q I know; but you were taking an appeal on the habeas corpus, and on these 1940 arrests you asked that those cases be held up and not disposed of by the Quarter Sessions of Westmoreland County until the Superior Court had passed on the appeals which had been taken to the Superior Court again arising out of the 1939 arrests?

A Yes, but at that time the appeal on habeas corpus had not been applied for; but we did not ask the Court at the time of those arrests in February, 1940, we asked Mayor O'Connell.

Q To withhold that decision?

A To withhold decision until such time as the outcome of this other case.

Q And you asked the Quarter Sessions Court to withhold its decision, and that decision is being withheld as the result of your own request, is it not?

A I believe the counsel made that request.

Q By the counsel; and you, in charge of the defense, asked him to make it?

A That is right.

(Paper marked Defendants' Exhibit "B")

Q I show you Defendants' Exhibit "B", and ask you whether you have seen that pamphlet?

A Yes, I have.

Q Was that printed by the Watchtower Bible and Tract Society?

A Well now, right—to tell you the truth, I don't know whether it was printed by them or whether it was printed here locally.

Q Who caused it to be printed?

Mr. Covington: We are the ones that signed it.

A The defendants in that particular case are the ones that requested it be signed.

Q Well, who printed it?

A Just where it was printed I couldn't say.

Q Did you have anything to do with its printing?

A Well, I saw it after it was printed.

Q Where did you see it?

A When it was being distributed—before it was being distributed.

Q Did you direct the distributing of it?

A I assisted in it, yes.

Q And at whose request did you direct the distribution of it?

A Of the defendants.

Q Of the defendants?

A On behalf—it was distributed on behalf of them and others of Jehovah's witnesses in Western Pennsylvania.

Q Who paid for that?

A Jehovah's witnesses.

Q Out of what fund?

A Well, any expense attached to it, voluntary contribution; and the actual printing of this I don't just recall, as I say, I don't know where it was printed.

Q Might it have been printed in New York

A It might have been, yes.

Q Might it have been printed in Pittsburgh?

A Yes.

Q You directed the printing of that, didn't you, Mr. Hessler?

A No, I couldn't say I directed the printing of it, but I knew it was going to be distributed, and assisted in the distribution of it.

Q How did you know it was going to be distributed?

A Because Jehovah's witnesses who had been incarcerated thought a great injustice had been done not only to themselves, but to others of good-will, as well as all Jehovah's witnesses, and they wanted to lay the facts of the injustice before the people of Westmoreland County.

Q And you undertake to tell the Court you don't know who printed that?

A Yes, I am frankly telling you at this moment I don't recall whether this printing was done in Brooklyn or whether it was done in Pittsburgh here, because there was done printing of this nature in both places.

Q Do you know who wrote up the things that are stated in that—

A No, I don't know that; frankly, I don't know who wrote this statement.

Q Do you know how it got to Pittsburgh?

A Well, if I knew where it was printed, I could answer that question.

Q Would your company have a record of who printed that?

A I don't know; I don't think so.

Q Of what companies are these individuals members—

A They are scattered all over; in Pittsburgh and—they are scattered all over.

Q Who paid the legal expense in connection with the cases out of which that piece of literature—

A Jehovah's witnesses. Jehovah's witnesses contributed towards the expense.

Q Is that the seventeen hundred dollars you spoke of?

A Yes; they contributed, or paid for all of it.

Q And then the Watchtower Bible and Tract Society didn't pay for it at all; it was these individuals that paid for it?

A Well, individual Jehovah's witnesses. Any money that the Watchtower Bible and Tract Society paid Jehovah's witnesses would remunerate them.

Q Well, listen,—you don't just make an expenditure of seventeen hundred dollars without making some record of it, do you?

A No, certainly not.

Q What account did you pay it out of?

A Out of the Kingdom Service Association.

Q Where is the Kingdom Service Association account?

A In Pittsburgh.

Q In what bank?

A The Mellon.

Q And who draws checks on the Kingdom Service Company's account?

A Mr. Stewart and Mr. McKnight and myself.

Q And yourself. You do then draw checks?

A No: I have the power to sign checks when necessary, in addition to another signature; two signatures are required on all checks.

Q And where does the money come from in that Kingdom Service Company account?

A From Jehovah's witnesses.

Q You mean from individuals who make contributions?

A Yes. Members of the Kingdom Service Association,

they contribute the money to help carry these cases to court. Any individual or any one group of Jehovah's witnesses, the burden would be too great. They recognize that. And in order that this message of the Kingdom may be taken to the people, regardless of any opposition that may occur, or any arrests, Jehovah's witnesses have organized and chartered the Kingdom Service Association in order to assist them in meeting these expenses.

Q Where is the check book of this Kingdom Service Company?

A In the custody of Mr. Stewart, the treasurer.

Q And Mr. Stewart is the man that carried one of these appeals into the Supreme Court of the United States?

A That is right.

Q And the expenses were paid out of that account?

A That is right.

Q And he was one of the persons authorized to write checks out on that account?

A Not at that time; at that time Mr. Chambers was the one authorized to write checks, but he is dead now.

Q Now then, can you tell us whether the cost of printing this particular piece of literature, Exhibit "B", might have been paid out of this account?

A Out of that? I would tell you if I could, if I knew where it was printed. At this moment, if I knew whether it was printed at Brooklyn or not, I could tell you that.

Q Well, do you have any records to show where such literature comes from?

A No, I don't know whether we have a record of that or not. I would be glad to tell you if I had, because the Kingdom Service Association and Jehovah's witnesses heartily endorsed its distribution, and if I knew the details of where that was printed, and who paid for it, I would gladly do so, but I don't.

Mr. Trescher: I would like at this time to ask that the accounts of the Kingdom Service Association be

brought into court at the session this afternoon.

Mr. Covington: They are third parties here. How can you ask parties other than parties to the suit to produce records?

Mr. Trescher: They are involved and a very important part of Jehovah's witnesses. In your own testimony it appears some seventeen hundred dollars was paid out, and it now appears it was paid out of this account; and, according to your theory of the case, it is an important matter, and I think the records ought to be brought into court rather than put the loose—

The Court: Well, we don't know that counsel has control over that. You can issue a subpoena duces tecum at noon time, if you want to.

Mr. Covington: What part of the records do you want? We don't want to bring into court all the records of a corporation.

Mr. Trescher: We want the records showing receipts and expenditures from this account of Kingdom Service Company.

Mr. Covington: In regard to this case?

Mr. Trescher: Particularly with regard to the seventeen hundred dollars which the witness says was paid out of that account, and with regard to other sums which were paid out during that period.

Mr. Covington: All right; we will be glad to bring them in.

Q Would it be possible, Mr. Hessler, to get the records from the Duquesne office showing this Jeannette company which you say at one time existed?

A The record of the Jeannette company from the Duquesne company?

Q Yes.

A We will be glad to find out what information they have relative to the interested persons that reside in Jeannette, but I don't—

Q Can you get those records in here?

A The Duquesne company I don't believe have any record of the former Jeannette company, but they do have the record of people who are interested.

Q Then it comes down to it, you don't really know whether there ever was a company in Jeannette?

A Yes, only from being informed of the fact.

Q There isn't any record of any kind of it?

A I haven't any in my possession right now.

Q The mayor on all these occasions—and I refer to Mayor O'Connell—told you that you could distribute things free in the city of Jeannette, either on the streets or homes, any time you wanted to, didn't he?

A Yes; on several occasions.

Q On numerous occasions he told you that?

A Well, not numerous; several.

Q And he told you you would be at perfect liberty to do that?

A And I told him at that time that sometimes we did make distributions free, but the general purpose of the Jehovah's witnesses was to give the people the message and give them an opportunity to make contributions, if they desired.

Q He told you he didn't want you molesting the people who didn't want your people in their homes, didn't he?

A We told him that.

Q And you told him—you insisted upon the right to enter their homes during the hours of religious worship, did you not?

A No, we never did that. We never had any desire to enter any home uninvited.

Q Well, you did come to Jeannette on at least a couple of occasions and insisted upon coming during the hours of religious worship, did you not?

A Well, there is no restriction upon the time a person can visit Jeannette.

Q But you insisted upon coming during the hours of ordinary religious worship, did you not?

A Well, we came to Jeannette on Sunday morning, because that was the most appropriate time to find people at home.

Q And you know from your actual experience of being at the police station that the police were just polluted with calls, as the result of annoyances on the part of your people, don't you?

A They had a few calls there.

Q They were kept busy the whole period that you were in town, were they not?

A They had a few calls from prejudiced people, but that was not representative of the people of good-will of Jeannette. There is lots of people in Jeannette of good-will, who would like to have Jehovah's witnesses call at their homes.

REDIRECT EXAMINATION

Mr. Covington:

Q Mr. Hessler, explain why a place like Jeannette is worked by a group of Jehovah's witnesses. How often is it done?

A Well, Jehovah's witnesses put forth an effort to visit the homes of all the people in this community, or any community, three or four times a year, and in communities like Jeannette, where they have—some distance from the home company, and where they have encountered police interference, it is advisable to visit that community in a large group, in order to cover the town quickly and at the same time give everybody in the community an opportunity to receive this information.

Q Now, you say there is no company in Jeannette at this time. In cities where there is no company, of that size, what is the ordinary method of working it?

A It is visited by Jehovah's witnesses from other companies, and from time to time we hold a little convention, Jehovah's witnesses—we hold what we call a zone assembly twice a year, and they come from within a

radius of fifty or sixty miles of Pittsburgh, and then they visit the communities within a radius of twenty-five, thirty miles from the assembly; and they do it in groups of ten, fifteen, twenty-five cars, depending upon the size of the community.

Q. And Jeannette is within that area. Is that correct?

A. Yes.

Q. And it is worked that way three or four times a year?

A. Yes; we try to work it three or four times a year.

Q. Now, this action is brought for the benefit of all of Jehovah's witnesses. You are suing for others, too; are you not?

A. It is brought on behalf of Jehovah's witnesses and on the part of people of good-will who reside in these communities.

Q. Who are the people that like to receive Jehovah's witnesses?

A. Yes.

Q. And those are the ones you are seeking to warn?

A. Not only seeking, but the message we have for them is of vital importance they receive it, in order that they receive life.

Q. And about how many Jehovah's witnesses are there that are affected by this suit and the action of the defendants?

A. Well, surely there would be in the vicinity of Pittsburgh here around seven, eight hundred; in the zone around fifteen hundred.

Q. And certain numbers of those individuals from time to time throughout the year go to Jeannette and similar places. Is that correct?

A. Yes.

Q. Now, you were cross-examined by Mr. Trescher relative to the amount that you are allowed on the books, the large bound books there. You get those from the Society on a contribution of five cents. Is that correct?

A. Yes.

Q Now, you are a full-time worker. Is that correct?

A Yes.

Q Now, pioneers and all other full-time workers, how do they get the books?

A They get the books for five cents.

Q On the same basis?

A On the same basis.

Q And the company workers are what type workers—part-time workers?

A Yes.

Q And they have secular employment?

A Yes.

Q And work after hours or on Sundays?

A Yes.

Q And they get their literature not direct from the Society, but from the local company. Is that correct?

A Yes.

Q And a local company gets it from the Society?

A Right.

Q Now, what rate does the local company get the bound book for, the large bound book?

A The company gets the large book from the Society for twenty cents.

Q And the individual members of the local company get the book from the company for the same price?

A For the same price.

Q And are they all required to place the books at the designated, set figures?

A Not more than contribution of twenty-five cents, but if they want to give them away that is their own matter.

Q And they contribute to the company twenty cents, which is in turn returned to Brooklyn. Now, explain the reason why a full-time worker gets them for five where as a company worker gets them for twenty?

A Well, it is recognized that a full-time worker in most cases has expenses, the same as anyone else, but inasmuch as this work is of vital importance that the people

throughout the earth receive it, and many of them are without employment, full-time workers not only use that money for living expenses but they also use it to enable them to give books away—booklets away free from time to time.

Q Now, the work that is from time to time carried on in communities like Jeannette on the streets—is that true—the magazines are distributed?

A Yes.

Q Why is the work done on the streets, instead of being confined to house work, house to house?

A Very often, when the home is visited, there is no one there, and in order not to miss anyone, Jehovah's witnesses, from time to time devote time, on the street corners exhibiting "Consolation" and the "Watchtower" magazines to them, to give all those people who wish to do so an opportunity to receive the same.

Q Now, just for the purpose of the record, demonstrate and show how that work is carried on on the streets.

(Placard marked Plaintiffs' Exhibit No. 39).

Mr. Trescher: There is no charge in your complaint about this particular piece of literature.

Mr. Covington: This is as to "The Watchtower"—you say there is no allegation with respect to "The Watchtower"? Look at page 4, describing the "Watchtower" and "Consolation" magazines, at the top of the page.

Mr. Trescher: You just tell what it is.

Mr. Covington: That it is part of the literature distributed, and that it is distributed from house to house and upon the streets. Now, we allege that that is the way it is done, and that you threaten to enforce this ordinance if it is done in that manner.

Q (Continuing) Now, would you kindly explain how this work is carried on on the streets? How are the Witnesses equipped?

A They all carry a bag similar to this (producing bag), with their literature in it, and they take their position

up near the curb. As a person approaches, they hold that sign (Exhibit 39) up so they can read it (witness demonstrating), "Religion is a Snare! The Bible Tells you Why. Read the Watchtower, 5 Cents".

Q Is that the slogan that appears on the sign?

A That is on one of the signs. And then they walk down, and if somebody else goes by they repeat it. And if they are interested, they may have the opportunity to secure it; if they are interested and do not have the five cents, and would like it free, they get a copy free, and they are told that someone will call at their home and ask if they read it and like it. And maybe down the street at another block—

Q You are referring now, are you not, to Plaintiffs' Exhibit 39? That is the thing that is used?

A Yes.

Q Now, the bag you have strapped over your shoulder now, what is usually in that bag?

A "Watchtower" and "Consolation" magazines.

Q Are other street workers equipped with similar signs?

Q A That is right, similar.

Q Such as "Religion Injures! Christianity Blesses You". And with that "The Watchtower" is presented for five cents a copy. Is that right?

A Yes.

Q And "Abandon Religion! Serve God and Christianity" is another sign; "Seek Righteousness and Live!" is another sign or slogan; "Righteousness Exalts a Nation! Christianity is Righteous!" is another slogan; "Religion is Ruining the Nations! Christianity Will Save the People!"; "Religion Works Evil! Christianity Brings Good!" Those are the various slogans used by the individuals in the street work, in the manner that you have demonstrated?

A Yes.

(Bag used by witness in demonstration marked Plaintiffs' Exhibit No. 40)

Q On the one sign is "The Watchtower Explains the Theocratic Government, 5 cents per copy", and on the other side "The Watchtower and Consolation, 5 cents per copy". Is that the sign on the opposite sides of the bag?

A That is correct.

Q If a person is financially unable to obtain that particular piece of literature then being offered, is it given to him freely, if he is interested?

A That is right; if he is interested, they will be glad to give it to him free.

Mr. Trescher: As I recall the testimony, he didn't say at any point—

Mr. Trescher:

Q Let me ask you: You did not undertake at any point to say that you had been in any manner interfered with in the distribution of this magazine, or the "Watchtower" magazine?

A I wasn't asked that question.

Q You were not asked that question. I just wanted to make sure that I hadn't overlooked that. That is quite all right.

A I did not testify to that fact.

Q I do want to ask you one more question: The records of the—what was the name of the company you spoke about a while ago?

A Kingdom Service Association.

Q Does that association keep a record of all its receipts and expenditures?

A Yes.

Mr. Trescher: Very well. I will ask that that record as well be brought in this afternoon.

Mr. Covington: Now, if the counsel would just kindly give us a reason why he wants us to bring that. I mean, we can get it, but there is no use cluttering up the record with all the books and activities—

The Court: In my own way, I think it is rather obvious. Here is an ordinance directed in connection with

monetary sales, and so forth, and the monetary feature enters into it. It is your attitude here that that is in no way connected with this particular matter. Now, it is of course relevant to show the contrary.

Mr. Covington: Now, we could cause to be brought, of course, those records. That Kingdom Service Association is not operated—is not the Duquesne Company or the Pittsburgh company of Jehovah's witnesses, it is entirely separate, used by Jehovah's witnesses for the purpose of paying out money to defend these cases that have been brought down here and maintain a Kingdom School for the children.

Mr. Trescher: That is just one of the troubles, we have too many corporations, and too many associations, and too many companies, and too many individuals.

The Court: He wants to follow through along that particular line, of course,—

Mr. Covington: All right, we will bring it; we will bring the records.

(Recess taken until 1:30 o'clock P.M.)

AFTERNOON SESSION

CHARLES R. HESSLER resumes the stand.

CROSS EXAMINATION (resumes)

Mr. Trescher:

Q Of what do the records of the Kingdom Service Company consist?

A Why, it shows the money that was received to help defray the expenses—

Q You didn't understand my question. I say, of what do the records consist? What are the books?

A Well, it consists of the amount of money received, the amount of money expended, and the number of who are

members.

Q Do you keep a day book?

A We have a set of books, yes.

Q And of what does that set consist?

A It keeps a record of the money received and of the money expended.

Q Well, is there a day book and a ledger, or what?

A A ledger, yes.

Q Only a ledger?

A And a daily record, or a weekly record, of money received.

Q Does that show all receipts and expenditures, from whatever source?

A Yes.

Q Do you have a cash book as well?

A I have a—yes.

Q Do you have a bank deposit book?

A Yes.

Q And is the only account of the company in the Mellon Bank?

A It is in the Mellon Bank, yes.

Q Is that the only account? Does it have any other bank accounts?

A In the First National Bank, I believe.

The Court:

Q Instead of the Mellon, or an additional one?

A Well, I will have to make—I can't answer that just now.

Mr. Trescher:

Q Well, you write checks, don't you?

A I sign checks for the bookkeeper, or the cashier, or secretary.

Q Who is the cashier of that company?

A Mr. Stewart; he is the secretary and treasurer.

Q Mr. Stewart was in court this morning?

A Yes, I believe at the present time the Kingdom Service

Association funds are in the First National Bank. Now, I would like to qualify that later.

Q Do any of your affiliated or associated companies have an account in the Mellon Bank?

A Yes, they do.

Q What one?

A Well, I believe the Allegheny company does.

Q What is the address of the Kingdom Service Company?

A Well, at the present time it is the Wabash Building.

Q What room?

A Mezzanine floor.

Q Records kept there?

A Well, some of them are kept there, and Mr. Stewart, secretary and treasurer, keeps some at his home.

Q Where is his home?

A 317 Grace Street.

Q That is, Pittsburgh?

A Yes, that is right.

Q Who are the other officers of that company?

A Well, Mr. McKnight.

Q What is his first name?

A Thomas McKnight.

Q What is his official capacity?

A Vice president.

Q And who is the president?

A I am.

Q And your first name, Mr. Hessler, is what?

A C. R.—Charles R.

Q And is that company incorporated under the laws of Pennsylvania?

A They have a certificate of authority under the laws of Pennsylvania, and incorporated in the State of Delaware.

Q Is all of the business of Jehovah's witnesses in this particular zone, the zone of which you are the head, transacted through that corporation?

A No, it is not. The only expense—

Q What other corporation do you use?

A That is the only one we use. The various companies of Jehovah's witnesses are not incorporated, but in order to assist Jehovah's witnesses in this entire area to meet the expenses of these various court cases where that work has been interfered with, we had to have some orderly arrangement of meeting that expense; and, in addition to that, the Kingdom Service Association was organized to operate Kingdom schools where little children were expelled from the public schools, and to prevent their parents from being incarcerated for failure to send them to school, a school is provided and operated, and Kingdom Service Association is incorporated for that purpose, and that is the sole purpose of the corporation.

Q Now, when companies purchase books—

A The Kingdom Service Association has nothing to do with that.

Q That is handled direct between the company and—

A And Watchtower.

Q (Continuing)—and the New York office, or the Brooklyn office. Is that right?

A That is right.

Q And from what source does Kingdom Service derive its income?

A The only income they have at all is from voluntary contributions on the part of members. The members contribute a dollar a year membership, and that money is used to help for maintenance expenses and school property, and any other money that is received comes from voluntary contributions on the part of members.

Q Now, when we were in court this morning, I believe counsel stated that the records of the Kingdom Service Company would be produced this afternoon—

Mr. Covington: Counsel did not say that; counsel said he would try to get them here.

Q Well, have you produced them, Mr. Hessler?

A No; we were unable to get in touch with Mr. Stewart; he was out of the office when we got out.

Q Just a minute. Mr. Stewart was in court here this morning.

Mr. Covington: He was not.

Q Do you mean to say I didn't see Mr. Stewart here in court this morning?

Mr. Covington: I did not.

Mr. Trescher: I would like to ask that the witness be directed to give the answers.

Mr. Covington: Well, the witness doesn't know.

The Court: How do you know whom he saw?

Mr. Covington: I know he wasn't here. That is how I came to say that; I know he wasn't here.

The Court: Well, let me suggest to both counsel that you be just a little bit more orderly in your procedure. Make your objections to the Court.

Mr. Covington: We object to that line of interrogation, about whether or not Mr. Counsel saw the witness Stewart; that is entirely improper.

The Court: Well, he asked him whether he wants to say he did not, and he can say whether he did or did not.

Q Was Mr. Stewart in court?

A Not to my knowledge; I didn't see him. Not to my knowledge.

Q What efforts did you make to see Mr. Stewart?

A I had his wife, I tried to get him on the telephone.

Q Is there anyone else in the office at the Wabash Building?

A He is not—Mr. Stewart works at secular work, and he is at his office, or was at his office this morning and was unable to be here.

Q Is anyone at the office of the Kingdom Service Company at the Wabash Building?

A No.

Q No one in charge down there?

A Not during the day time.

Q Well, is there anyone here in court that has access to those records?

A No.

Q You, as president of the company, do not have access to them?

A I don't have them either.

Q You mean, you can't get the records?

A I couldn't possibly get them, if I wanted. Mr. Stewart—

Q You don't even have a key to the office?

A No; Mr. Stewart handles that part of the work,

Q And how about Mr. McKnight?

A He doesn't have access to those records, either.

Q No one but Mr. Stewart?

A That is all. The only thing Mr. McKnight and I do is to countersign the checks. All checks issued by Mr. Stewart must be countersigned by either Mr. McKnight or myself.

Mr. Covington: Just a moment, counsel. I want to say this, Your Honor, for the benefit of the Court: we will have all the records that counsel desires here when the court next convenes after the 2:30 recess. That line of interrogation can be avoided, and give ample time when the court meets again, and all those records that counsel desires will be here.

Mr. Trescher: It seems to me, if the Court please, it might save the time of the court if we were given an opportunity to inspect these records in the meantime.

The Court? Well, when they are brought in, we will give you a reasonable opportunity. Of course, we cannot give you a lengthy one.

Mr. Trescher: I realize that.

The Court: They are not here now, though, so we have to proceed on that basis.

Q And the Allegheny company has its office in the Wabash Building too?

A No; it has its office at 1807 Brighton Place.

Q And who has charge of that company?

A Well, Mr. Petty, company servant—Mr. Joseph Petty is company servant at that unit.

Q Mr. Petty. And what is his first name?

A Joseph.

Q Is he at that address at all times?

A No, he is not; he is only there several times a week.

A. R. GUNDECKER, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q State your full name?

A A. R. Gundecker.

Q Where do you live?

A 812 Island Avenue; McKees Rocks.

Q In what county?

A Allegheny County.

Q And what is your occupation?

A My occupation is an ordained minister.

Q Do you have any secular work that you do?

A I do.

Q What is your secular work?

A Credit manager.

Q And for what concern?

A DeRoy's, Joseph DeRoy's, 311 Smithfield Street.

Q Is that here in Pittsburgh?

A Yes, it is.

Q Now, how long have you lived in the city of Pittsburgh?

A My entire life.

Q And how long have you been here in Allegheny County?

A My entire life.

Q Did you go to school here?

A I did go to school here.

Q Now, are you one of Jehovah's witnesses?

A I am.

Q And how long have you been one of Jehovah's witnesses, Mr. Gundecker?

A Since 1926.

Q Is your wife one of Jehovah's witnesses?

A She is.

Q What company or unit of Jehovah's witnesses are you connected with?

A The West End Unit of the Pittsburgh Company.

Q The West End Unit of the Pittsburgh Company. Now where does that unit meet or have its headquarters?

A Odd Fellows Hall in West End; I believe it is on Wash Avenue.

Q How long have you been connected with the Pittsburgh company?

A Since 1926.

Q You are an ordained minister of the gospel, as you have testified. Do you possess credentials similar to those that were introduced in evidence this morning here, that shows that you are—that each one—do you have such credentials?

A Right with me (producing card).

Q And that is the same—or rather, the identification is the same as this Exhibit No. 38. Now, your method of worshipping Almighty God is how?

A I worship Almighty God by obeying His commandments, by going forth telling people of God's kingdom that is now being established on earth. As it is stated in the Scriptures that this gospel of the Kingdom must be preached in all the world as a witness, it is necessary for me to obey the instructions of God, because that is also stated in the Scriptures. It states that the soul that does not obey that prophet will be destroyed from among the people, and it says necessity is laid upon me that I preach the gospel.

A And you heard the testimony of Mr. Hessler as to the

way in which this gospel of the Kingdom message is preached, did you not, by door-to-door distribution of literature?

A Yes, sir.

Q And street distribution. You believe that as your way of distribution, or rather, preaching the gospel?

A That is right; because the Scriptures also state that Paul went from house to house and taught publicly.

Q And you were in the city of Jeannette on or about April 2, 1939, were you?

A I was.

Q And what were you in the city of Jeannette for?

A I was in the city of Jeannette to bring this comforting message of God's kingdom to the people.

Q And were you arrested at any time that day?

A Yes, I was arrested.

Q Before you were arrested, what if anything were you doing?

A I was in the town witnessing to the people of God's coming kingdom, distributing books to them.

Q And when you say "witnessing", how do you do that?

A I call upon the people, present my identification card, and explain to them that God's kingdom is being established, that we have books in our possession showing from the Scriptures that God is establishing that kingdom for all mankind. We then give these books to the people, if they so desire, and we ask in some cases a contribution. But that morning I did not ask for any contribution.

Q You did not. Did you have with you on that occasion any literature, booklets? I show you here booklets "Fascism and Freedom", and book "Face the Facts". Is that the two booklets you had with you that morning?

A That is the two books.

Q Now, as you approached the people you offered those to them. Is that right?

A I did.

Q Did you manage to receive any contribution that day?

A I did not.

Q How long had you been engaged in that work before you were apprehended by the officer?

A We were working in another part of the town and had completed that part. One of the brethren was working on one street, and I was undecided as to where I should begin to work, so that I and two sisters that were with me stopped on a street corner, and we were just talking the matter over when a car came up—in fact, it was Mr. Douglas was in the car with an officer. The officer stopped right in front of where we were talking, at the corner—

Q That is, one of the police officers of the City of Jeanette?

A Yes.

Q Go ahead.

A The officer approached the three of us and asked if we were soliciting. I told him we were not soliciting, we were preaching the gospel, and I immediately handed my testimony card to him. And I gave him a booklet that we had on the Supreme Court decision showing we had a right to do this work. He glanced at this and handed it back to me, and said that the mayor wanted to see me about it. I told him this work was very important, and that I couldn't go along unless I was under arrest. He said I am not under arrest. So I said, "I will immediately have to start to work," and the officer then told me to go ahead and do what I was doing.

Q The officer told you to go ahead and do what you were doing?

A Yes.

Q What did you do after he told you that—

Mr. Trescher: If the Court please, I don't know whether we are going to try each one of those cases over again.

The Court: No, we are not concerned with the past,

except it might possibly interpret the future from the past: but not to the extent of going through all these facts. It has already appeared, I presume it is not disputed, is it? It will be admitted that at least twenty-one people were arrested on that particular day and given hearings, and eighteen of them committed?

Mr. Covington: Yes.

The Court: And it was along this line of distributing, as you say—and selling, as counsel on the other side says—this literature?

Mr. Covington: That is right.

The Court: Then I would suggest that at least you confine it to the main lines, rather than the individual cases.

Mr. Covington: All right.

Q Now, Mr. Gundecker, from time to time you have occasion to go back to Jeannette as a member of your company, do you not?

A That is right.

Q And to preach this gospel in this way?

A Yes.

Q Do you desire to continue to preach this gospel in that way when you go there again in the future?

A I certainly do.

CROSS EXAMINATION

Mr. Trescher:

Q Mr. Gundecker, your name appears on Defendant's Exhibit "B". Did you authorize anyone to place your name on that printed exhibit?

A I know that we were to have this done. I don't know what you mean by an authorization.

Q Well, did you tell anyone that it would be quite all right—

A It met with my approval, if that is what you mean.

Q It met with your approval?

A Yes.

Q And you authorized the placing of your name at the end of that printed statement; did you?

A I couldn't say I had authorized that. I didn't know this was going to be made up.

Q Who talked with you about that?

A The only one that talked to me was when I was in the— in confinement at the jail.

Q Well, who was it that talked with you about it then?

A One of the brethren; I don't remember.

Q Did you know that that printed statement was being made up by anyone?

A I did not know it at the time.

Q Did you know it was being distributed on the streets in Jeannette?

A Yes, I had.

Q What is it?

A I did.

Q From whom did you learn that?

A From some brother.

Q Who was that brother?

A The ones that went in with me. I don't recall the name now. I didn't pay that much attention to it at the time; it was just a matter of conversation.

Q Well, that was written and distributed a year after you were arrested, wasn't it?

A No; this was distributed while we were in jail, if I remember correctly.

Q I think, Mr. Gundacker, you had better consider that again. It would take some little time to print that, would it not?

A That is right; it would.

Q And your case had been before the Supreme Court already when that was printed?

A If I understand the question correctly, this literature was distributed while I was in jail.

Q Oh, no; you look at that and tell me whether you can identify it, whether you ever saw it before, and whether

you authorized anybody to put your name to the end of it?

A Well, I made no authorization; I cannot say I authorized it.

Q Do you know who wrote it?

A No, I don't.

Q Did you see it before it was distributed?

A I was in jail while it was distributed.

The Court: Well, not in Jeannette maybe.

Q (Continuing) No; you were not in jail in Jeannette, at any rate.

Mr. Covington: On April 5 I understand he was in jail in Greensburg, and that the case had already gone to the Supreme Court.

A Really, I can't—I am confused about the time. It seems to me that there was one of these forms, or what you may call it, at the time that I was in jail.

Q Do you know who was making it up?

A No, I don't.

Q Did you authorize your name to be added to it?

A No, I gave no authority.

Q Did you authorize anybody to distribute it on your behalf?

A No, I didn't authorize anyone, because I didn't have it at that time, didn't see it.

Q And you don't know where it was printed?

A No.

Q Or who had it printed?

A No.

Q Or who paid for the printing?

A No, I do not.

Q Or who arranged for the distribution—or, in fact, anything in connection with it?

A No sir. I do know that they were distributed; that is all I know about that, and that it met with my approval.

Q And that was after you had voluntarily submitted yourself to jail, rather than to pay the fine that had been im-

posed?

A That is right.

Q When did you first know that you were going to voluntarily submit yourself to the Westmoreland County jail?

A I think it was about a week before we went.

Q And at that time was the matter of printing these pamphlets discussed?

A I have a hazy idea it was, but I can't recall it.

Q Do you know who discussed it with you?

A No I do not.

Mr. Covington: We will call Mr. O'Connell as an adverse witness.

JOHN M. O'CONNELL, called by the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Covington:

Q Kindly state your name, sir.

A John M. O'Connell.

Q Where do you live, please?

A Jeannette, Pennsylvania.

Q You are the mayor of Jeannette, are you not, sir?

A Yes, sir.

Q How long have you been mayor of Jeannette, please?

A Three years.

Q And you are familiar with Ordinance No. 60 of that City, are you not?

A Yes, sir.

Q That is the so-called peddling ordinance that is now in evidence here in this case?

A That's right.

Q You have heard the testimony of Mr. Hessler, have you not, as to how Jehovah's witnesses do this work from

door to door? You have heard how they approach the people?

A Yes, I heard that.

Q And offer the literature to them on a contribution—you heard that testimony, did you not?

A Yes, I heard him say that.

Q I will ask you this question: Have you ordered the police, the chief of police and the police of Jeannette, at any time in the past to arrest any of Jehovah's witnesses who might be found distributing literature and receiving money therefor?

A No I did not order it in those words; they were ordered—

Q Just tell us what you did do then, mayor.

A I told them, if they found any evidence of violation of this ordinance, they were to arrest these people that were guilty of the violation; in other words, if they were selling the literature, they should be arrested.—

Q Now, what did you consider—

Mr. Trescher: Let him finish his answer.

Q Are you finished with your answer there?

A There were many people investigated at various times; none of them were arrested except those against whom the police obtained evidence of sale.

Q Now, what do you consider as evidence of guilt under the ordinance? So that we can understand what your intentions are relative to its enforcement.

A Well, it is the contention of Mr. Hessler and some of his group that by the presentation of this card they are not soliciting funds; but most of the cards—of which they seem to have three or four different kinds—most of the cards, in conclusion, ask for a contribution for this book.

Q That is right. Now,—

A Several times, when people were arrested, and the only evidence we could obtain was a presentation of that card, they were dismissed; but where the people were willing to testify that they were asked to pay for this

booklet, we arrested them. It is my intention to continue to enforce that ordinance in the same manner.

Q Now, assume for the purpose of—I am just trying to get what your intentions are relative to this ordinance. Now, assume I am one of Jehovah's witnesses, and I walk up to your door and knock, and you come to the door, and I say, "Good morning, Mayor O'Connell. I have here a book entitled 'Enemies', that shows who the enemies of man are, as explained by Bible prophecies. If you are interested in this book, you can obtain it on a contribution of twenty-five cents." Now, would you consider that a violation of the ordinance?

A Yes, I would.

Q And anyone found offering literature in that manner would be prosecuted under the ordinance in the future. Is that correct?

A That is correct.

Q And likewise, if this booklet "Angels" and another—or two others (indicating)—were presented to you at your door in Jeannette, three, on the contribution of only a dime, you would prosecute. Is that correct?—these three booklets here for a dime (indicating).

A Well, it is rather difficult for me to give you what might or would be done in any particular circumstances. It is my intention to enforce that ordinance, and we will continue to enforce it as we have done in the past; treat each particular case on its merits.

Q I understand that, mayor, but we are just trying to find out what your intentions are now.

A Well, I am trying to explain my intentions.

Q Maybe we can agree one with the other, if any money passes between the occupant of the house and Jehovah's witnesses in consideration of the exchange of the literature, that would, in your opinion, constitute a violation of the ordinance?

A No, sir, I did not say that. I have never so contended.

Q Well, what do you contend?

A In each particular case where there was a conviction there was positive testimony that a solicitation had been made for a contribution. If the contribution was voluntary, without a solicitation, I do not consider it a violation of that ordinance.

Q The ordinance doesn't say anything about that, does it, mayor? The ordinance says "Whoever shall solicit orders or sell within the borough". Isn't that the way it reads?

A I think so.

Q Now, if I approach your door and offer that book to you (demonstrating), and state you can obtain it on a contribution of twenty-five cents, you would consider that a violation of the ordinance. Is that correct?

A That is right.

Q And you would continue to prosecute anybody found to distribute literature in that manner. Is that right.

A Yes, sir.

Q How many of Jehovah's witnesses have been arrested in Jeannette, if you remember, mayor? How many have been tried down there and convicted, all together?

A Well, I think originally there were three or four.

Q Three or four. And then the next time there were eighteen. Is that not correct?

A Twenty-one, three of whom were discharged for lack of evidence; and then the next time there were—

Q Eight.

A Eight.

Q Now, do you know whether or not any other of Jehovah's witnesses have been arrested since that time?

A Yes, there have been several arrests. They were discharged for lack of evidence.

Q Yes; discharged without a complaint having been filed against them?

A I guess that is right.

Q Because there was a lack of evidence against them. Now, is there a standing order with the police to enforce that

ordinance in case they find that Jehovah's witnesses are presenting this book (Exhibit 3) to the people, or any other book like it, and asking a contribution? What are the orders you have given the police, or has the chief given the police, on that?

A Well, the instructions are to enforce that ordinance at all times. We not only enforce the ordinance against Jehovah's witnesses but against all others. We have numerous peddlers and people coming in there selling articles, that go from door to door. We never know they are in the town until we get complaints from the people. Ordinarily the complaints about Jehovah's witnesses were more numerous, because they came on Sundays. They always came on Sundays. People seem to object to being annoyed on Sunday at their homes.

Q Do you remember the occasion when Mr. Hessler came down and presented to you—first to the chief of police and then to you—this little story (handing Exhibit 2 to witness)?

A Yes, I remember that.

Q Now, mayor, do you make any distinction between one who offers literature for sale and one who offers merchandise other than literature, under the ordinance? In other words, as far as peddling or hawking is concerned, to your mind it makes no difference whether they were distributing literature or whether they were distributing potatoes. Is that correct?

Mr. Trescher: I think you ought to take it out of the category of farm products, because under the law of Pennsylvania there is a difference there.

A The ordinance itself explains the various things which are violations of the ordinance.

Q Yes, I understand that. All I am asking now is, do you make any distinction between products like merchandise, that is, groceries or drygoods, from literature?

A Well, as I have said, we try each particular case on its merits; and if you refer to these pamphlets and booklets

and potatoes, then I would say that we make no distinction.

Q No distinction at all?

A No.

Q Now, mayor, do newsboys sell newspapers on the streets of Jeannette?

A Yes; and we don't interfere with them. Neither do we interfere with your Jehovah's witnesses when they are selling these things on the street.

Q What is that?

A I say, neither do we interfere with Jehovah's witnesses when they sell these things on the street.

Q Well, newsboys have news routes in Jeannette, do they not?

A Yes.

Q And they distribute newspapers from door to door, do they not?

A Yes.

Q And they receive money for it, don't they?

A Yes.

Q Do you prosecute any of the newsboys for carrying news routes in Jeannette?

A No.

Q You don't. Why not?

A Because I don't believe it would be lawful for us to do that.

Q Well then, why is it you believe it is lawful to prosecute one of Jehovah's witnesses for distributing literature like this, that is printed matter?

The Court: I am afraid this is getting rather in the realm of argument.

Mr. Covington: Yes, I think so, Your Honor. I withdraw the question.

Q Mayor O'Connell, when this matter of appeal came up before Judge Laird from these eighteen men, that is the presentation of their appeal to the Court of Quarter Sessions, the first time, you appeared there, did you not,

before Judge Laird ruled on the matter; to persuade him not to allow the appeal—did you not?

Mr. Trescher: That is objected to, at least the form of the question. He might ask him whether he appeared there, but the use of the word "persuade" I think is uncalled for.

The Court: What did he do in connection with it?

Q Did you have conversation with Judge Laird, either in or out of open court, relative to a denial of these appeals?

A Well, if you want a complete answer, I will give it to you. Mr. Trescher at that time, I believe, was at of town; I am a member of the bar, and I called Judge Laird and told him I understood there would be an appeal sought, and told him that I would like to have the right to oppose the appeal. And he said "Well, the appeal will not be granted in your absence." When they came in and asked for the allocatur, I was notified to appear in open court to oppose it, in the absence of our solicitor. The only conversation I had with Judge Laird was over the phone, in which I notified him that I would like to have the right to oppose the allowance.

A Did you later appear in court and oppose it?

A I did.

Q Yourself?

A Yes, sir.

Q When?

A On the day the motion was presented—or the petition was presented asking for the allocatur.

Mr. Trescher:

Q You are a member of the bar of the Supreme Court of Pennsylvania and also the Court of Common Pleas and the Court of Quarter Sessions of Westmoreland County?

A I am.

PLAINTIFFS REST.

DEFENDANT'S CASE

JOHN M. O'CONNELL, recalled on behalf of the defendant, having been previously sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Mr. O'Connell, you have already been sworn. State whether or not each time the members of Jehovah's witnesses, or anyone else who has come before you, have been given a full and fair hearing on whatever charge may have been against them.

A They have been given a complete hearing.

Q When they first came there on April 2, or shortly before April 2, 1939, did you have some conversation with Mr. Hessler?

A Yes, I believe I did.

Q Was that a day or so before their arrest on April 2?

A I believe I had no conversation with Mr. Hessler until after the original arrests were made. There were four people arrested, I believe, originally.

Q That was the latter part of March, 1939, was it not?

A I can't be sure of the dates, but I believe that is correct.

Q And what was the substance of that conversation with Mr. Hessler?

A Well, I told Mr. Hessler when he came there representing these people that we did not object to the distribution of this literature. He contended that it was being distributed as a matter of conscience with them. I told him we had no quarrel with that and wouldn't object to it, if they would distribute the literature free of charge, but the complaints seemed to be that they were trying to force these sales on the people on Sundays and the people seemed to object to that. And I asked him if it

weren't possible for him to come on some other day, and if it wouldn't be possible for him to distribute this literature without trying to sell it; and he said that was contrary to their method of doing business and refused to comply with my request. And I told him that I have no alternative other than to enforce this ordinance.

Q And then did he make any threat with reference to what he would do, or his organization would do, if you attempted to enforce the law?

A He did. He said "Well, we are not going to abide by your ordinance." He said, "I will bring enough people in here that I will get the job done, whether you like it or not." In the meantime, they had taken an appeal on the original case, in which there were four people convicted. Then I asked him if he wouldn't await the outcome of that appeal, and he said he would not wait for anything, they were going to make us like it—or words to that effect. And that is why I opposed the appeal in the second instance. The first appeal was still pending, and during the pending of that appeal—or while the appeal was pending, rather, they brought a hundred and eighteen people there all at one time, on Sunday morning, to—to just make it uncomfortable for us.

Q Were you in the police station during that particular day?

A I was.

Q During how much of the day were you in the police station?

A Well, I believe I got there about nine-thirty or ten o'clock in the morning, after these complaints became so numerous at my home and the police department called me and said they were getting numerous calls; and I stayed there then from nine-thirty or ten o'clock until about four in the afternoon.

Q Will you give the Court some idea of the number of complaints that were received at the police station or at your home, or anywhere else, during that day?

A Well, before I left the house in the morning I must have had twenty-five or thirty calls, and while I was in the police station the phone was ringing constantly all day long:

Q All the time?

A Yes, just one call after the other. And the police and the fire department went out to investigate these complaints, and they talked to the people that made the calls, and only in the places where they felt they had evidence did they make an arrest. They stayed there all day. They went from house to house. In many houses people were called on two or three or four times, by different groups.

Q And during the course of the day, I believe you stated that some twenty-one persons were arrested; and against how many of those individuals was there evidence of commercial violations?

A Eighteen.

Q And did you dismiss those against whom there was no evidence of actual bartering or trading?

A I did.

Q And the rest, I believe, were held for court?

A No, I fined them.

Q I mean, the rest were convicted and fined?

A Yes.

Q And there were later appeals to the several courts of the Commonwealth. Is that correct?

A That is correct.

Q And finally a petition for a writ of certiorari to the Supreme Court of the United States?

A That is right.

Q And Ordinance No. 60 was the ordinance that was involved in that petition for review to the Supreme Court?

A That is right.

Q The certiorari in that case was refused, I believe, and a petition for reargument refused?

A Yes, it was refused both by the Supreme Court of Penn-

sylvania and by the Supreme Court of the United States.

Q And the record of that case is at No. 722 October Term; 1939, in the Supreme Court of the United States. ✓

A I think that is the record. I might say, before the Court of Quarter Sessions the allowance of the appeal was denied on the day that I opposed it—in order to make the record straight here. Then they petitioned for a rehearing before Judge Laird of the Quarter Sessions Court, and the rehearing—or reargument was granted, at which I did not appear; the solicitor for the City appeared at that time.

Q That is, myself; I had returned and was in court at the reargument?

A That is correct.

Q Now then, after the Supreme Court of the United States denied a certiorari and denied a reargument in the case of Stewart vs. the City of Jeannette, state whether or not any request was made from counsel for the eighteen defendants in that case, through me, relative to the incarceration of those individuals in the jail either at Jeannette or the Westmoreland County jail at Greensburg.

A Well, it is my recollection that they asked that they be permitted to surrender themselves—on—I think the day was Saturday, and they fixed the date; they fixed the date themselves, and asked that I commit them to the Westmoreland County jail, which I did. And I sent the commitments to the jail, and they voluntarily surrendered themselves to the Westmoreland County jail at Greensburg.

Q And that arrangement was made at least several days before, was it not?

A Yes.

Q And I believe was made through counsel, both for these defendants and for the City of Jeannette?

A That is right.

Q And in accordance with that arrangement, you merely

sent the commitments up to the Westmoreland County jail?

A I did.

Q Now, on the day that these defendants did voluntarily surrender themselves to the jail, in lieu of paying the fine that had been imposed by you, state whether or not Exhibit "B" (handing same to witness) was distributed through the streets of Jeannette.

A It was distributed through all the streets of Jeannette; and I was informed by various people who brought sample copies of that to me that they were distributed from Trafford, in the western part of the county, as far east as Latrobe; they were distributed in Trafford, Greensburg and Latrobe.

Q Does it contain references to yourself and to Judge Laird, of the Court of Common Pleas of Westmoreland County, which are untrue?

A Yes, and—

Mr. Covington: Now, that is an untrue question; that is a matter that speaks for itself.

The Court: Yes. Of course, you can ask him about certain particular matters, although I think we are getting pretty far beyond the scope.

Q Now, Mr. O'Connell, I believe again in February there was testimony that a number of Jehovah's witnesses—eight, I believe, to be exact—were arrested and convicted. Is that correct?

A That is correct.

(Book marked Defendant's Exhibit "C")

Q And is Defendant's Exhibit "C" a record of the testimony which was taken at the hearing before you in the cases of those eight individuals?

A It is.

Q And you have stated to the Court that in those cases, as well as in others, unless you had evidence of actual bartering and selling you did not undertake to fine or convict any of these individuals. Is that correct?

A That is correct.

Q And that is the situation with reference to these individuals where the verbatim testimony appears in this record?

A That is right.

(Adjourned until Monday, February 24, 1941, at 1:30 o'clock P.M.)

Monday, February 24, 1941.

AFTERNOON SESSION

JOHN M. O'CONNELL resumes the stand.

DIRECT EXAMINATION (continued)

Mr. Trescher:

Q Mr. Hessler has stated, Mr. O'Connell, that in going to Jeannette members of Jehovah's witnesses went there for the purpose of what he describes as witnessing or preaching the gospel. Did the actual practice bear out that statement, as demonstrated by the testimony in the several cases before you?

Mr. Covington: We object to that, may it please the Court, because it calls for a conclusion and opinion on the part of the witness; and secondly, the proceedings themselves would be the best evidence.

The Court: It has been transcribed, I believe?

Mr. Covington: Yes, and I believe it has been identified; and we have no objection to his introducing that as evidence.

Mr. Trescher: My purpose was to avoid offering the whole record, but if the Court wishes, or Mr. Covington wishes, I will be glad to submit the whole record.

The Court: Well, we will permit you, when the time comes, to offer the whole record, and read so much as you care to.

Mr. Trescher: Mr. Hessler was permitted to make general statements with reference to a practice, when he obviously and plainly could not have been present when they actually occurred.

Mr. Covington: We have no objection to the introduction of any part of the minutes at all, but we do object—

The Court: The trouble is, you were asking to exclude that which you wanted in with your own witness. We opened the door very widely for your witness in a great deal of this matter; and, of course, it does not come with very good grace for you to shut it in the face—

Mr. Covington: I am not trying to shut off any evidence. I am just trying to say that this testimony here would be a conclusion and opinion on the part of the witness, and hearsay.

The Court: Yes, I think he can do this. I do not know that the record in itself as transcribed has any more virtue than his own recollection. He is entitled to testify to his recollection as to what testimony was given before him in that respect.

Mr. Covington: I should think, then, that would be the best evidence, the stenographer's minutes, which counsel has already identified.

The Court: No, it is not; I think you will find, if you look at the textbooks, they are all on an equal plane, that it is only the recollection of the person who transcribed them, at best.

Mr. Covington: The matter is being tried before the Court, and any ruling on the evidence would not be prejudicial, at any rate. We will rest on your objection.

The Court: The objection is sustained.

Mr. Trescher: That is all. You can cross-examine.

Mr. Covington: That is all. No questions.

Mr. Trescher: If the Court please, I offer in evidence the record of the notes of testimony taken before Mr. O'Connell, as mayor, Defendant's Exhibit "C".

Mr. Covington: I have no objection.
The Court: It is admitted.

Mr. Trescher: I would like to call Mr. Hessler for further cross examination.

CHARLES R. HESSLER, recalled for further cross examination, testified as follows:

CROSS EXAMINATION

Mr. Trescher:

Q Mr. Hessler, I believe you told us when you were on the stand as a witness for the plaintiffs here that the Kingdom Service Company derived its income from individual contributions. Is that correct?

A Some from individual contributions, yes; in fact, they are all contributions.

Q Well, which did you say?

A They are all from individual contributions.

Q They are all from individual contributions?

A That is right.

Q You now repeat that statement, do you?

A To clarify that point, they are received by the Kingdom Service Association through the various groups or companies that these individuals are associated with.

Q So that the contributions, or the great bulk of them, to the Kingdom Service Association are not received from individuals, but are received from the different companies. Is that correct?

A Yes; from the different groups, but primarily it comes from individuals.

Q Now, when the records of the Kingdom Service Association show membership, what does that mean?

A That means that those Christian men and women who desire to have a share in carrying on the expense of these court trials, and who desire to assist parents of children

who have been expelled from public schools to receive an education in the common branches—reading, writing and arithmetic—and other studies prescribed by the State Code, may do so. Many of the parents are unable to send their children to a private school, and Jehovah's witnesses assist them to the extent of their ability.

Q Now, the actual entries marked "Membership" make up a very, very relatively small part of the contributions to the companies, do they not?

A That is right; to the Association.

Q Here, for example, in the month of July, 1939, the memberships appear to be substantially one-fourth—or one-third of the contributions, and the different companies make up the principal contributions?

A That is right.

Q Now then, how is a company's contributions determined each month?

A It is voluntary contributions on the part of the individuals that are associated with that, that turn that money into the company, and to whatever extent the company desires to send to the Association they may do so. If they do not desire to send any, that is their privilege; there is no request ever made for any money.

Q You mean to say, there is no connection between the number of books that the company disposes of and the amount that it contributes to this Kingdom Service Company?

A Yes; the Kingdom Service Association has nothing to do with the amount of literature or anything, or whether they put out any literature. The Kingdom Service Association—if you will permit me to clarify—is simply a vehicle or instrument or agency that is used by Jehovah's witnesses in this vicinity to be enabled to meet the cost of the interference on the part of municipality officials who have sought to enforce commercial ordinances against this type of work.

Q Exactly. So that the Kingdom Service Company financ-

es your legal fights against the various commercial ordinances in the several municipalities. Isn't that right?

A Well, it is an association that is being used by Jehovah's witnesses—

Q For that purpose?

A —to carry a burden that any individual or any individual group would be unable to do alone.

Q Yes. So that each one of these companies who contribute to the Kingdom Service Company, in return, have their cases looked after by the representatives of the Kingdom Service Company. Isn't that a fact?

A That is right.

Q And your expenses are virtually all for legal expenses?

A Exactly.

Q Is that right?

A And operating the Kingdom schools.

Q The income of that company, as contributed by the various companies who are associated with it or contribute to it, seems to run somewhere between two and four hundred dollars a month, does it not?

A Well, approximately that, between that.

Q And the amount expended during most of this period for legal services runs perhaps three to four times as much as you spent for the maintenance of this school that you speak of?

A Well, I would say that the—No. The operation of Kingdom school at the present time is almost equally as much as the legal expenses. It runs around \$200 a month at the present time for operating the Kingdom school, because that includes the amount of money that is spent for board, so many of the children have to be transported.

Q During the month of January, your record shows, Mr. Hessler, that some \$405.37 was expended for various items that have to do with legal cases that are in court on behalf of the different companies, as against \$154.60, the entire school expense.

A Well, the school, of course, is operated every month; the legal cases, it is spasmodic. They may have a lot of bills come in one month, and then not have so many the next month or two. For instance, if you notice, the records there show since March, 1939, the total amount of legal expenses in connection with the City of Jeannette was around twelve hundred and some dollars, and then filing fees and printing and other expenses made another six hundred dollars, making a total of about eighteen hundred dollars over a period of about two years. Then, in addition to that, there have been expenses in other communities which have had to be met also. Now, the only way that money could be possibly met would be the voluntary contributions of the part of Christian men and women who are interested in trying that this message of Almighty God's kingdom continues to go to the people, regardless of any interference, because these men and women sincerely and honestly believe—

The Court: Now, answer the question, please, and don't get so much extraneous matter in.

Mr. Trescher:

Q In the month of September, for example, you paid \$371.70 for legal expenses against \$75.56 for school expenses. Isn't that right?

A That is right; whatever those figures are.

Q And the sum of \$10.73 for the operation of a sound truck?

A If that is what those figures are; I don't just recall them.

Q During the month of October you spent \$239.25 for legal expenses as against \$99.72 for school expenses and \$64.08 for sound truck; and during the month of November, 1940, \$139.68 for legal expenses as against \$137.04 for school expenses. Is that right?

A If that is what those figures show.

Q And during the month of December, \$143.10 for legal expenses as against \$137.97 for school and \$16.43 for a sound truck; and January, 1941, I believe we have, and

that is the last month. Taking at random back to December, 1939, your legal expenses—for legal fees and the like—were \$436.30 as against \$5.49 for the operation of a school. Is that right?

A Well, in January—

Q I am speaking of the month of December, 1939.

A Well, whatever expenses you have there in that month.

Q In January of 1940 it shows \$136.15 for operating expenses, legal expenses, as against \$8.67 for a school?

A Yes. In 1939, beginning of 1939, the children were sent back to the public schools, most of them were sent back, and at that time it reduced the cost of operating the school at that particular time.

Q During the month of February, 1940, you spent \$50.44 for legal expenses as against \$1.25 for school expenses?

A That was at a time when the school was closed.

Q And during the month of March, 1940, you show a total of \$304.06 for legal expenses as against \$91.25 for a school?

A That is right.

Q And \$5.38 for a sound car. And during the month of April, 1940, you show \$52.69 for legal expenses as against \$217.68 for operation of a school, the latter figure including \$147.50 for taxes?

A That is right.

Q And during the month of May, 1940, you show \$166.03 for legal expenses as against \$74.73 for a school; during the month of June \$31.31 for legal expenses as against \$60 for a school and \$16.50 for a sound truck; and during the month of July \$438.53 for legal expenses as against \$68.33 for school expenses?

A Yes, sir.

Q And in August \$83.25 for legal expenses as against \$61.25 for school; and during the month of September, 1940, \$371.07 for legal expenses as against \$75.56 for school; and during October \$239.25 for legal expenses as against \$99.52 for school?

A Yes, sir.

Q And November and December I think we have had. Now, Mr. Hessler, I believe you also told the Court that you had never personally received more than \$15 in any one month for expenses, did you?

A Yes; I was trying to bring the Court's attention to the fact that it did not exceed that at any time, and I would like to qualify that statement now.

Q You would like to correct that?

A To the point that the money I have received was in refund for expenditures that I have made on behalf of the Kingdom Service Association.

Q During the month of January, 1941, I believe you received payments, whether in reimbursement or otherwise, in an amount in excess of \$100, did you not?

A Yes, that is right.

Q That totaled in the neighborhood of \$115?

A Whatever it was, it was in payment of whatever money had been expended or was going to be expended.

Q Do you further wish to qualify your statement with reference to \$1700 having been spent conducting the litigation which had been instituted by the City of Jeannette?

A Yes, to the statement it has been over seventeen hundred, that the records there show to the extent of eighteen hundred.

Q Mr. Hessler, I ask you whether or not between three and four hundred dollars of the bills which you say make up the eighteen hundred dollars do not apply to expenses which you have contracted in this particular case which is now pending before the Court. Is that not a fact?

A I believe some of the bills that are recorded there are as the result of the necessity of bringing this suit.

Q And they are included in the eighteen hundred dollars of which you speak, are they not?

A I believe they are.

Q And some of them here—for example, a bill of Mr. Kahanovitz for \$200, as yet unpaid, at least does not affirm-

atively appear to have been in connection with Jeannette cases. Is that correct?

A Yes; that still is an amount due Mr. Kahanovitz on the original bill.

Q And what Mr. Kahanovitz did in connection with the Jeannette cases was to appear in court once when appeals were granted, and once to oppose the appeal, and once to reargue—

A And to prepare—

Q The case?

A No,—and to prepare an appeal to the Superior Court.

Q And Mr. Kahanovitz, in connection with that service, had previously been paid some \$150 or \$200. Is that right?

A That is right.

Q And yet you say there is an additional bill of some \$200, which you include in this \$1800; and which has not been paid?

A That is right; it has not been paid.

Q Mr. Kahanovitz, to be exact, had previously received exactly the sum of \$200 for his services in connection with those Jeannette cases.

A I can't be positive just exactly how much he has received.

Q And yet you say that this statement for services—

A All those bills there (indicating) that are made out by Mr. Kahanovitz are in connection with the arrests at Jeannette.

Q And that voucher for that was not made up until February 28, 1941?

A Well, that particular voucher there, yes, in order to show that Mr. Kahanovitz still has a bill due him for \$200.

Q Isn't there something wrong with that (handing paper to witness)? We are not even in the 28th yet.

A Well, whatever—the voucher was made up to cover this

letter, calling attention to the fact that there was still \$200 unpaid.

Q When was that voucher made up, if you know?

A Well, I don't know what date it was made up, but that is the date that is on there.

Q And what is the number of it?

A 513.

Q And No. 512 is a bill from Mr. Epstein which was rendered last July—That is July 11, 1940—while your voucher bears the date January 18. Is that correct?

A I presume it is.

Q Do you know when that voucher was made up?

A No, I don't know when that voucher was made up, but it was made up in connection with some of the outstanding bills that Mr. Epstein had still unpaid.

Q A number of the items that you have charged as legal expenses include gasoline bills which were paid for you—

A Some gasoline bills, yes.

Q (Continuing)—and in one case I believe a tube for your automobile is charged as a legal expense?

A That is right.

Q And some \$300 is in connection with this case which is now pending before this court?

A Well, I couldn't tell you the exact figures or amount pertaining to this case, but Mr. Stewart or Mr. Petty could give you the exact figures on it.

Q Then do you have with you any of the records of the Allegheny company of Jehovah's witnesses?

A We have asked they be produced here in court. He is not the officer in charge of them; but you may have them. They are right there on the table.

Q All right; anyone here that is familiar with it?

Mr. Covington: Mr. McKnight—I mean Mr. Stewart, Sr. Now, that is a misnomer; there is no such thing as Allegheny company of Jehovah's witnesses, but that is the company of Jehovah's witnesses that is located in

the Wabash Building, that you requested in the notes.

Mr. Trescher: Are the books and records from the Duquesne company here?

Mr. Covington: I don't know; we telephoned for them.

The Witness: Yes, we telephoned for them and they are here.

Q Are you familiar with them?

A No, I am not.

Mr. Covington:

Q Will you explain what the sums were for that you received during the month of January, 1941, from Kingdonr Service Association, in connection with what case, what they were for?

A I would have to look at the vouchers.

Q Well, we will do that later.

GEORGE SERENCO, a witness called by the defendant, having been duly affirmed, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Will you state your full name, please?

A George Serenco.

Q And where do you live, Mr. Serenco?

A Duquesne, Pennsylvania.

Q Are you connected with any of the companies of Jehovah's witnesses?

A Yes, sir.

Q What company?

A Duquesne company.

Q And do you have the records of the Duquesne company with you?

A I have some, yes.

Q And do you have a record which shows a merger of a supposed Jeannette company with a Duquesne company

during the year 1937 or earlier?

A The company was not under Duquesne at that particular time.

Q Well, are there any records here which would show the existence of a Jeannette company and its merger with a Duquesne company at any time?

A I can't answer that.

Q Well, do you have the available records of the Duquesne company?

A I have, pertaining to some of the activities, yes.

Q Mr. Hessler testified that there was a Jeannette company in existence at one time, either during the year 1937 or prior to that time, and that it merged with the Duquesne company. Do you have any records which would show that merger?

A I have some letters—I haven't got them with me—that I went to receive some of the literature when the company was dissolved.

Q I believe you can answer that question. Are there any records which you have with you, or which you know of, in existence, which shows the merger of a supposed Jeannette company with the Duquesne company?

A You mean prior to 1939?

Q At any time.

A I have no records pertaining prior to that time.

(NO CROSS EXAMINATION)

CHARLES H. STEWART, a witness called by the defendant, having been duly sworn, testified as follows:

Mr. Trescher:

Q What is your name please?

A Charles H. Stewart, Sr.

Q And what is your occupation, Mr. Stewart?

A I am head clerk of the Auditor General's office, Pittsburgh & Lake Erie Railroad, Pittsburgh.

Q And where do you live?

A 317 Grace Street, Mount Washington.

Q You have with you in court, I believe, the books and records showing the receipts and disbursements by the Allegheny company of Jehovah's witnesses throughout the year 1940, have you?

A No, that would not be a correct statement; it is the Central Unit, Pittsburgh Company of Jehovah's witnesses.

Q Central Unit, Pittsburgh Company of Jehovah's witnesses?

A With headquarters in the Wabash Building, Pittsburgh.

Q And do these records contain a separate column showing receipts and expenditures as the result of sale or distribution of books?

A The book you are looking at is the cash book, which represents that information, receipts and disbursements on that account.

Q Does it also show the receipts and disbursements from the sale or other disposition of magazines?

A It does.

Q And does it show certain payments to a zone servant?

A More particularly zone servant expenses, not to the zone servant; small expenses which were allocated to us, for which we made payment; no payments direct to the zone servant.

Q You obtain your books from the same company all the time, or were they from different companies or societies that you bought books?

A You mean the literature that is distributed to the public?

Q That you distribute, yes.

A Practically all of our literature comes from the Watchtower Bible and Tract Society, 117 Adams Street, Brooklyn, New York. We buy also Bibles from the World Syndicate Publishing Company, Cleveland, Ohio. Those are the principal sources.

Q There seems to be a pretty fair margin of difference be-

tween the receipts and expenditures from books. For example, during the month of August you received \$248.84 from the sale of books and paid out \$117.64. What happened to that difference, do you know?

A • It just simply lay in the account.

Q It just simply lay in the account?

A Yes, sir. Whatever discrepancies—I mean whatever differences would be, it would just simply lay in what is known as the book account fund.

Q And in that same month you received \$54.59 from the sale of magazines and paid out to the Watchtower Bible and Tract Society the sum of \$50?

A It would be just according to the records.

Q During the month of September, 1940, you paid out \$275.85 for books, and apparently for some expenses in connection with the sale of them, while you received \$474.08. Would that balance just lie in the account?

A It just lay in the account.

Q During the month of October you apparently paid out \$287.50 and received \$479.29. That lay in the account, too, did it?

A It would lay in the account.

Q During the month of November you paid out \$348.67 and received \$491.12. That difference just lay there, too.

A It lay in the account.

Q And during the month of December—

A I would like to call your attention to the fact the figures you are reading there are total figures.

Q Oh, yes.

A And they represent balance as carried forward. Those figures you have been giving do not represent the actual receipts during the month, but represent a total that is carried forward, including not only moneys received during the month but the balance carried forward from the previous month. In other words, the figures you are setting up by that statement there would show a pyramiding of approximately \$200 a month; that would not

be true. You see the point I make?

Q I now see that you show here for the month of December a balance at the beginning of the month of \$142.45, a total of \$398.14, and payments during that month charged to books at \$237.91. Are those payments outright payments, or are they merely charges?

A Anything that is set up there as a payment, there is a check for cash.

Q You mean there was actually disbursed during the month of December \$237.91.

A \$237.91.

Q But you did not receive the amount of \$398.14 for books during that month?

A \$398.14 represents the balance of \$142.42 and should be deducted in order to get the amount of receipts.

Q And at that rate your receipts would be considerably less than your expenditures, would they not? Can you stay in business that way?

A I don't know just exactly what you are driving at, but the amount we paid out here, \$260, is an amount coming out of a total of \$484.81, which was available for disbursements during the month, and that \$484.81 included a carry-over from the previous month of \$162.73.

Q Your total of a balance carried over during that same month appears to be \$254.38, as shown by the figure in the last column of that page. What does that represent?

A Well, up to this time you have been talking exclusively about the matter of books.

Q Yes, I have been.

A Now you are asking a question with regard to a total overall receipts, which include other accounts besides the book account.

Q Is \$162.73 included in that total of \$254.38?

A Oh, yes; that \$234.58 includes \$162.73 allocated to the book account.

Q Now, where do you show payments to Kingdom Service Company, if you make any payments to the Kingdom

Service Company?

A They are represented in here by cash checks.

Q All right. What do they show for the month of January, 1941?

A For 1941 we have no disbursements.

Q The records here show that an Allegheny unit paid to the Kingdom Service Company \$51.70. What would be the Allegheny Unit? What that be your company?

A No, sir; that would be a unit distinct from our company, a separate unit.

Q What is the name of your company?

A Central Unit, Pittsburgh Company of Jehovah's witnesses.

Q Here is another entry, of January 22, in the books of the Kingdom Service Company showing "Allegheny \$17.30". Would that be your company?

A No, sir.

Q Now, what do you say the name of your company is?

A Central Unit.

Q And you say it shows no payment into Kingdom Service during the month of January, 1941?

A That is right.

Q Now, the books of Kingdom Service Company show a receipt on January 13—or it might be January 22—of \$7.25 from Central Unit of Pittsburgh Company. Would that be your company?

A That is right.

Q All right.

A That is a check that we issued, check No. 710, issued December 27.

Q It appears to be in here under date of either January 13 or 22. And was that a payment to the Kingdom Service Company?

A Oh, yes, Kingdom Service Company.

Q Do your books show any payment to the Kingdom Service Company during the month of December other than that one that you have just—

A No, just the one.

Q So that there is an Allegheny unit of Jehovah's witnesses?

A That is right, yes, sir.

Q And there is an Allegheny Jehovah's witnesses. How do you account for the fact that there are two here, "Allegheny" and "Allegheny Unit"?

A Well, I think that is just simply an abbreviation of the fact that it is Allegheny Unit.

Q Both of those contributions are by the Allegheny Unit, one in the amount of \$51.70 and one in the amount of \$17.30?

A Yes.

Q Do your records show any contribution during the month of November, 1940, to the Kingdom Service Company?

A No contributions during the month.

Q And your particular unit maintains offices in the Wash Building. Is that right?

A Yes, sir.

Q Your company has a telephone there?

A Yes, sir.

Q And that same office is occupied by the Kingdom Service Company?

A Yes, sir.

Q The telephone seems to be paid by your company. Is that correct?

A Yes, sir, we pay the telephone bill.

Q Who pays the rent for that office?

A The Central Unit pays the rent.

The Court: I wonder if we are not taking just a little too much time on this phase of the case.

Mr. Trescher: Perhaps we are.

Q If the books show during the month of September, 1940, a payment of \$100 to Pittsburgh & West Virginia Rail-

read Company. What would that be for?

A That is the rental of the space that we occupy.

Q In the Wabash Building?

A In the Wabash Building, yes, sir.

Q When your Allegheny Company obtains books of the character of "Salvation", the payment you make to the Watchtower Company is five cents—is that correct—for each book?

A The Allegheny Company is a unit by itself; their transactions are with the Watchtower Bible and Tract Society. When we buy those books, we pay the Society a price of twenty cents per book.

Q You pay twenty cents per book?

A Yes, sir.

Q And you buy from the Allegheny company?

A No, sir; the Watchtower Bible and Tract Society.

Q Just so I understand: When the Allegheny Company obtains the books from the Watchtower Company, it pays five cents each, does it not?

A They would pay the same as we would pay. That is just answering what I would assume to be the case, they would pay the same price we pay.

Q Well, do you know how much the Allegheny company pays?

A I have no knowledge of the accounts of the Allegheny company.

Q There is testimony here that the companies pay five cents—

Mr. Covington: I make objection to that: counsel is assuming a matter that is not even so. The testimony does not show that.

The Court: I may be under a misapprehension, but that is the impression I had.

Mr. Covington: If the Court is under that apprehension, it is a misapprehension. The witness Charles H. Hessler testified that the pioneers, that is, the full-time workers—he himself being one—got the books direct

from the Watchtower Society and that they got them for five cents a copy, and that the company and company workers got them at twenty cents apiece. That is what the testimony shows.

The Court: Yes, I think that is right.

Mr. Trescher: I am willing to submit that on the record, whatever the record shows.

Q Do you know how much the companies pay the Watchtower Bible and Tract Society for these books?

A Yes, sir.

Q You do know that?

A Yes, sir.

Q You have actually ordered the books then?

A I am passing invoices—that is, the invoices are passing through my hands for payment.

Q And you know that they pay twenty cents?

A Yes, sir.

Q And when they turn them over to a distributor, that is a person who takes them from door to door, how much does the Allegheny company charge?

A You mean how much does the Central Unit Charge?

Q How much does the Central Unit charge?

A The Central Unit Charges the publisher twenty-two cents.

Q And by "the publisher" you mean the person who takes them from door to door and disposes of them?

A That is correct.

Q Twenty-two cents, you say?

A That is right. That is a private agreement amongst us, as publishers, that we do that.

Q By a "publisher" you mean the person who goes from door to door?

A Yes, sir.

Q And what do you call the Watchtower Company? Do you call that a publisher?

A They are publishers in the sense of being manufacturers of the books.

Q But when you refer to "publisher", you mean the person that goes from door to door to dispose of them?

A Yes, sir.

CROSS EXAMINATION

Mr. Covington:

Q Mr. Stewart, would you kindly take this book,—First, I ask you: The Central Unit is one of the divisions of Jehovah's witnesses in the city of Pittsburgh and vicinity. Is that correct?

A That is right.

Q Now, that is not a corporation, is it?

A No, sir.

Q It is an unincorporated company. When you say "company" what do you mean? Is that a group of individuals known as Jehovah's witnesses? Is that correct?

A That is correct. In other words, it is banding together of a certain number of people with a common aim.

Q Within a given area?

A Within a given area.

Q And this given area that is represented by the Central Unit is a part of Allegheny County. Is that correct?

A That is correct.

Q Now, first I ask you: You get the bound books from the Watchtower, such as the book "Salvation", for twenty cents. Is that correct?

A That is correct.

Q And the publisher takes them for twenty-two cents. Is that correct?

A That is correct.

Q And that is for what purpose?

A You mean the two cents?

Q Yes. What is the agreement there for the two cents?

A Well, as the publishers among ourselves agree to put the two cents—allow that to remain in the company's funds, to allow for wrapping paper and string, and pay for

freight on books—for instance, we have freight on Bibles to pay—and different small expenses in connection with the matter of the distribution of the books.

Q Then the account which counsel referred to when calling off the figures there of receipts included a balance that was carried forward from all the funds? Now, explain this book to the Court. What is that "Sound Car" account, "Book" account, and other accounts?

A Yes. A place where I have all the figures, a turnover account. This sheet (indicating), which is our cash book reference, shows receipts from the general fund—

Q Now, explain the general fund. What is that?

A The general fund is the expense fund, which comprises the matter of the donations or the contributions of the people to pay the expenses of rent and other legitimate expenses of the company.

Q Does the general fund—or do the general fund contributions come from the distribution of any literature?

A No; these are entirely apart from the matter of the distribution of literature.

Q Well, are they voluntary contributions from the members of the unit?

A They are voluntary contributions.

Q And not for the exchange of any literature. Is that correct?

A That is correct.

Q What is the next account?

A The book account.

Q Explain that.

A The book account in this book represents the accumulations of money turned in from the sale of literature, and ~~as it~~ ^{as it} is accumulated it is paid out by check to the—principally to the Watchtower Bible and Tract Society and for the purchase of Bibles to the Syndicate Publishing Company of Cleveland, or any other small expenses that might come under that head.

Q And what is the present standing of the unit with the

Watchtower Bible and Tract Society? Do you owe them money now for books?

A Yes, we owe them in the neighborhood of about thirteen hundred dollars for books. Do you want this next column?

Q Yes, I want you to explain it—
Mr. Trescher:

Q May I see that thirteen hundred dollar item?

A That is not in this book.

Q Oh, you are just telling about that from knowledge, you mean?

A Yes. This matter—What this book represents, magazine account, the Watchtower Magazine and Consolation Magazine, and the figures are accumulated, and as the sales are made disbursements are made, and that money is remitted to the Watchtower Bible and Tract Society, usually on a monthly basis, and the check so indicates. The next column is a small account, called Zone Servants' Expenses, and it has a small matter of \$2.05 in here in this particular instance, representing some small expense that had been turned in and which expense would be allocated among the several units, each one paying their part. The next represents Sound Car, this one I am looking at, this page I am looking at, expenses on account of a sound car, which may have been tires, or may have been gasoline, or it may have been something else—a battery. And on the disbursement side we have the several disbursements for the month to the same accounts.

Q Now, do the receipts, according to the records that you have before you, exceed the disbursements?

A The receipts in this book?

Q Yes. The unit down there maintains a hall and pays rent and expenses, does it not?

A Yes, sir.

Q Now, all of your expenses, is that taken care of by contributions from the literature that you get from the

publishers, twenty-two cents, and so forth? Explain that.

A The matter of expenses that are paid out of the book account are just simply the small expenses in connection with handling the books, alone. But the major expenses in connection with the company, such as the payment of rent and such other expenses that come, they are paid out of the general fund. We have our telephone bill, and we have our payment with regard to our water—

Q Well, what I am trying to drive at and get before the Court is: Do the receipts for the distribution of the books to the publishers, the members of the unit, exceed the disbursements for operation of the unit or is it less than the disbursements for the entire operation of the unit?

A The matter of the operation of the book account—

Q I am not talking about any particular account, I am talking about the entire unit now, the expense for the entire unit.

A The expense of the entire unit, including the purchase of books, would exceed the amount that would be paid to the Watchtower Bible and Tract Society for books. Does that answer your question?

Q No. Does more money come in for the books, books placed over the counter—the funds received from that, does that exceed the expenses for the operation of the entire unit there?

A The answer is no.

Q All right. Explain it. How is the deficit taken care of?

A The deficit in connection with the matter of the operation of the unit is taken care of by contributions through the general fund account.

Q Now then, explain what the general fund account is, and contributions.

A The general fund represents the contributions by the individuals which come in to the treasurer; and through that fund, the general fund, we pay the expenses of the

company; so that the expenses of the company itself are carried along—rent, whatnot—those things, for instance, as we specified, the telephone bill, water bill, and other expenses like that, are all taken care of through the voluntary contributions.

Q On the book account—these balances that he was speaking of here, about receipts showing a total of four hundred and various high figures here—that includes the balances carried forward?

A That is right.

Q Now, turn each month and give us the total receipts less the balance carried forward.

A Well, going backward, the total, including the balance carried forward, for January was \$484.81; the balance carried forward in that month was \$162.73; the difference—

Q \$322.08?

A \$322.08.

Q Now, of that \$322.08 are to be included contributions from the general fund. Is that correct? Or is that from the book account?

A We are talking about the book account.

Q All right. Now then, what are the disbursements?

A We disbursed during the month of January the sum of \$260.06 from the book account.

Q So that leaves a balance of \$56.02, does it not?

A No; the balance as of February would be \$226.15.

Q That is 162 plus 56—is that correct?

A I didn't get that.

The Court: Don't you think you are going into this altogether beyond what is really required, considering the materiality and value of the testimony in the case? To my mind, it is of very, very small moment, the whole thing, and yet you are taking up a lot of time with it.

Mr. Covington: I think so, too, but he brought it out on direct.

The Court: You have your testimony in, and unless

that is shown to be contrary by the other side, I would accept it, of course.

Mr. Trescher:

Q You stated that you owe the Watchtower Company some thirteen hundred dollars for books that you have gotten in the past. Do you have any books or records showing how much the different publishers owe you? And I refer to the Allegheny unit.

Mr. Covington: Allegheny? He doesn't have the Allegheny.

Mr. Trescher: The Central Unit of Allegheny County, then.

A Yes, I have such a record.

Q How much does that total?

A Well, approximately the publishers owe the unit in the present time about sixty to seventy-five dollars, I would say.

Q Is that the total?

A That would be the approximate total.

Q That is, they may charge their books when they take them away?

A They may.

Q And who has charge of that distribution?

A You mean the matter of the account.

Q Yes. Who deals them out or turns them over to the person who buys them?

A Mr. Harry Faill. You mean the actual books themselves?

Q Yes.

A Yes.

Q And do you have any inventory on hand of the books on hand, its actual value?

A Yes.

Q How much is it?

A We took an inventory recently of the books on hand, and it was valued at approximately \$520.

Q Worth of books?

A The books on hand.

CHARLES E. WALTER, a witness produced on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q What is your position with the City of Jeannette, Mr. Walter?

A Chief of police.

Q And were you the chief during March and April of 1939?

A Yes, sir.

Q And do you know Mr. Hessler?

A Yes, sir.

Q Were you present in the office of the police station when Mr. Hessler came in there the latter part of March, 1939?

A Yes, sir.

Q Did he, prior to the date when a large number of Jehovah's witnesses came there about April 2, 1939, hand you a list of persons whom he intended to bring into town?

A That was on the Sunday that the arrest was made, when there was a hundred or more, after the first arrest was made.

Q Did he hand you that list that day?

A Yes, sir.

Q Or before that? When did he hand it to you?

A The second Sunday that they made the visit in Jeannette, when there was a hundred or more came into town.

Q Well, was it the same day the arrests were made, or was it—

A The same day the arrests were being made.

Q Before, as Mr. Hessler has testified. Now, did you have some conversation with Mr. Hessler before that group came into town that day?

A Not prior to that.

Q Was he in the police station at all prior to that time?

A The only time he was in the police station was the Sunday the arrest was made—prior to that day, the first Sunday that we had made arrests.

Q When did you first make the arrests?

A That was two weeks prior to that date. I don't recall the day. There was five persons arrested.

Q And those cases, as I understand it, were pending in court—

A That is right.

Q (Continuing)—when the large group came in on April 2?

A That is right.

Q Now then, what if anything did Mr. Hessler say when the six persons were arrested some two weeks prior to April 2, 1939?

A After the mayor had arrived, he and the mayor were discussing about whether they had a right, or not, and the mayor insisted on posting bond for a hearing, which was done; and during the course of conversation Mr. Hessler said, "We will be back; and be back with more than the Jeannette police can handle"; but there was nothing said as to when they would be back.

Q Now, will you give the Court some idea how many complaints were received at the police station in Jeannette when this group of Jehovah's witnesses were in Jeannette during the middle of March, 1939?

A The Sunday that there was better than a hundred there there were so many telephone calls coming in the police department that it was referred to the fire department by the operator. The telephone was busy in the police department, and they were sending the calls in to the fire department, which was in the same building.

Q How long did that continue?

A That day?

Q Yes; the receipt of complaints.

A Until late in the afternoon.

Q Can you give the Court some idea of the total number of them?

A According to the list Mr. Hessler gave me, there was a hundred—

Q No, the total number of complaints?

A Oh, the total number of complaints?

Q Yes.

A Well, I suppose in the course of the day there would be at least fifty to seventy-five complaints.

Q Were they all in the police station alone?

A From the time they first arrived until they had left town.

Q Were you present during the day that the arrests were made in February of 1940?

A No, I was not; I was sick at that time.

(NO CROSS EXAMINATION)

THOMAS MILBURN, a witness produced on behalf of the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Mr. Milburn, you are chief of the fire department at Jeannette?

A Yes.

Q Were you present in the police station about the middle of March, 1939, when Mr. Hessier made some statement with reference to bringing a group of Jehovah's witnesses back into Jeannette?

- A I was.
- Q What was that statement?
- A He made the statement to the mayor that they would send so many to Jeannette the police wouldn't be able to handle them.
- Q And was that while there were certain cases then pending before the mayor?
- A Yes.
- Q And was that threat made good?
- A It was.
- Q How long afterwards?
- A Two weeks.
- Q Were you on duty that day?
- A Yes.
- Q Would that be this April 2 date that we have been talking about here, or about that time—April 2, 1939?
- A About that time.
- Q Were you present in the fire department when some complaints were received.
- A Yes.
- Q Just tell the Court approximately how many complaints were received by the fire department.
- A We had between fifteen and twenty complaints come in then.
- Q At the fire department?
- A Yes.
- Q And that is a separate phone, a separate connection, from the police department?
- A That is right.

CROSS EXAMINATION

Mr. Covington:

- Q Were you present when Mr. Hessler delivered to the chief this letter (handing Exhibit 2 to witness)?
- A No, sir.
- Q You weren't?

A No, sir.

Q Did you hear any discussion—you didn't hear any discussion then about that letter. Is that correct?

A That is correct.

CHARLES R. STEWART, Jr., a witness called by the defendant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Trescher:

Q Mr. Stewart, the records which you have produced in court here show the payment of a number of bonds. Were those bonds issued by the Kingdom Service Company?

A Kingdom Service Association, yes.

Q Kingdom Service Association. And are those bonds being paid from time to time out of the funds of the company?

A Being paid from time to time out of receipts from contributions, yes.

Q Well, that is out of the funds of the company?

A That is right.

Q Regardless of the source from which they come?

A That is correct.

CROSS EXAMINATION

Mr. Covington:

Q Those bonds were issued for what purpose?

A Those bonds were issued to provide funds for the construction of the Kingdom school at Gates, Pennsylvania.

DEFENDANT RESTS.

TESTIMONY CLOSED.

Certificate

I HEREBY CERTIFY that the foregoing pages contain a full, true and correct transcript of the evidence taken upon the trial of the case of ROBERT L. DOUGLAS, et al, Plaintiffs, vs. CITY OF JEANNETTE (PENNSYLVANIA) et al, at No. 1206 Civil Action; together with the offers of counsel, objections thereto, ruling of the Court thereon, and exceptions thereto.

HARRIET COLE THOMAS
Official Reporter.

Pittsburgh, Pennsylvania
August 16, 1941.

Certificate

I, Robert M. Gibson, Judge of the District Court of the United States for the Western District of Pennsylvania, hereby certify that the foregoing is a true transcript of all the evidence, offers of counsel, objections thereto, rulings of the Court thereon, and exceptions thereto, in the case of ROBERT L. DOUGLAS, et al, Plaintiffs, vs. CITY OF JEANNETTE (PENNSYLVANIA), et al, Defendants, at No. 1206 Civil Action; all of which, so certified, is ordered to be filed and to become a part of the record, this 18th day of August, 1941.

R. M. GIBSON
Trial Judge.

Opinion

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette, (Pennsylvania), a
municipal corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

GIBSON, District Judge.

✓ The court, after hearing and consideration, makes the
following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. All the plaintiffs are resident citizens of the Commonwealth of Pennsylvania and of the Federal Western District of Pennsylvania, except the plaintiff LAMBORN, a resident citizen of the State of Ohio, and plaintiff SEDERS, a resident citizen of the State of West Virginia.

2. Defendant CITY OF JEANNETTE (Pennsylvania) is a municipal corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania.

3. Defendant JOHN M. O'CONNELL is the duly qualified and acting Mayor of said City of Jeannette and is a resident citizen of the Commonwealth of Pennsylvania.

4. The plaintiffs are members of a cult known as Jehovah's witnesses, who have brought the action for themselves

and for all Jehovah's witnesses in the Western District of Pennsylvania.

5. Jehovah's witnesses are an unincorporated body of persons who profess themselves as under the Theocratic government as reflected in the Bible. Each asserts that he is an ordained minister and as such required by his faith to give witness to the name and honor of ALMIGHTY GOD by preaching the gospel, as understood by them, upon the streets of communities, including those of defendants, the City of Jeannette, and by selling and distributing literature printed by the Watch Tower Bible & Tract Society, Inc., a New York corporation, and the Watch Tower Bible & Tract Society, a Pennsylvania corporation, in the form of books, booklets, and periodicals, to people upon the streets and at their homes. This literature is so distributed for the purpose of informing and convincing the persons receiving it concerning the religious beliefs of said Jehovah's witnesses. Said Jehovah's witnesses, and the books, etc. distributed by them, strongly attack religious practices of organized churches existing today.

6. The defendant City of Jeannette has enacted and in force an ordinance which, inter alia, requires all persons engaged in the distribution of books, periodicals and tracts, such as those distributed by Jehovah's witnesses, to pay a certain fixed amount for a license or permit to enable them to sell and distribute such matter, under penalty of arrest and fine for sale in Jeannette without such license or permit. A copy of said ordinance, marked Exhibit "A" is attached to these findings.

7. Officers of defendant, the City of Jeannette, including the officer defendant, have arrested certain of the plaintiffs, and others of Jehovah's witnesses, solely for selling and distributing the literature (described in paragraph 5, supra) without obtaining a license or permit therefor, and have visited upon them the penalty prescribed by the ordinance of defendant, the City of Jeannette, wherein the arrest was made, and have declared their intention to further enforce

said ordinance against plaintiffs and others of Jehovah's witnesses.

8. Plaintiffs have testified that their distribution of literature as aforesaid is their method of serving ALMIGHTY GOD and preaching His Word.

9. The evidence does not disclose that plaintiffs' distribution injuriously affects the public health, safety, morals or welfare.

Conclusions of Law

- I This court has jurisdiction of this cause.
- II The ordinance of the City of Jeannette is invalid as it affects plaintiffs and others of Jehovah's witnesses, in that it deprives said plaintiffs and others of the right of freedom of the press and of religion granted them by First and Fourteenth Amendments of the Constitution of the United States.
- III The defendant, City of Jeannette, may not lawfully exact a license or permit fee from distributors of books, tracts or periodicals, put out for the purpose of informing or influencing the recipients, said books, tracts or periodicals not being in violation of any public law.
- IV Plaintiffs are entitled to a decree by which defendants, the City of Jeannette, is enjoined from enforcing its said ordinance, and said defendant, City of Jeannette, is enjoined from acting to enforce said ordinance against plaintiffs and others of Jehovah's witnesses.

Discussion

The essential facts of this case are parallel with those in WALTER A. REID, ET AL. v. BOROUGH OF BROOKVILLE, ET AL., No. 1183 Civil Action, and the discussion of that case is applicable to the instant one, and is therefore not repeated.

Exhibit "A"

Ordinance No. 60 of the City of Jeannette reads as follows:

"That all persons canvassing for or soliciting within said Borough (now City of Jeannette), orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50; for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days."

Opinion of District Judge in Companion Case
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Walter A. Reid, Margaret Reid;
 Thomas W. Aikins, Foster C. Hummel,
 Manson C. Martz, Carl Swisher,
 Gertrude Glass, Kathryn Glass,
 Angelo Galuppo, and Charles R.
 Hessler, *Plaintiffs,*

vs.

No. 1183
 Civil Action

Borough of Brookville (Pennsylvania),
 a municipal corporation,
 Harold W. Thompson,
 Borough of Clearfield, (Pennsylvania),
 a municipal corporation,
 C. E. Roseberry,
 City of Monessen, (Pennsylvania),
 a municipal corporation,
 James C. Gold,
 Borough of New Bethlehem
 (Pennsylvania), a municipal
 corporation,
 George A. Cowan, and Russell Barker,
Defendants.

DISCUSSION

The plaintiffs are members of a cult known as "Jehovah's witnesses", and the defendants are boroughs of the Western District of Pennsylvania and their officers.

The only ground common to the defendant boroughs is that each has in force an ordinance which requires a license from a borough authority to each person selling or distributing merchandise, including books and periodicals, upon the streets or from door to door. The ordinance of the Borough

of Monessen differs from the other ordinances in that it is directed against disloyal persons and those who have refused to salute the American flag, and asserts as one of the requirements for a license that the applicant salute the flag. Although joined together as defendants, the cases of the various boroughs were tried separately.

The facts in each case were substantially parallel. Members of "Jehovah's witnesses" had been arrested in the past in each borough, and the officers of the borough have declared their intention to pursue the same policy in the future if the "Witnesses" functioned as in the past without first securing the license contemplated by the ordinance. On behalf of plaintiffs it is claimed that the application of the ordinances to "Jehovah's witnesses" and their activities encroaches upon the civil and constitutional rights of such Witnesses. The rights so attacked, they say, are those of freedom of worship, freedom of speech, freedom of press and of assemblage.

Each of "Jehovah's witnesses" asserts that he is an ordained minister. The method of his ordination is not very plain, but the evidence of it is found in a small printed card which bears his name in typewriting at the top and the printed signature of the "Watch Tower Bible & Tract Society, J. F. Rutherford President". This card asserts in part:

"TO WHOM IT MAY CONCERN:

This is to certify that
 whose signature appears below, is an ordained
 minister of Jehovah God to preach the gospel of
 God's Kingdom under Christ Jesus and is therefore
 one of Jehovah's witnesses; that he is sent forth
 by this Society . . . to preach the gospel of God's
 kingdom"

The function of each Witness as such ordained minister is to sell or distribute the periodicals or tracts put forth by the Watch Tower Bible & Tract Society upon the street or

by a house-to-house canvass. In this distribution religion as practiced and advocated by organized church bodies is denounced as a "snare and a racket"—this being in accordance with the declarations of the Watch Tower publications. A housewife, called from her cooking breakfast to listen to pointed criticisms of her religion by a persistent book agent, is quite likely to regard the agent as a nuisance, even though the agent sincerely believes that he is but fulfilling his duty to Jehovah by his attempted sale and advocacy. And the ordinary citizen is apt to be indignant and regard a Jehovah's witness as disloyal when the latter refuses to salute the national flag, or to allow his children in school to salute it, even though the Witness may be acting pursuant to a religious scruple.

Practices such as those mentioned have caused ordinances such as those in suit to be enacted, or at least enforced, for the purpose of curbing the activities of Jehovah's witnesses. As to the legality of the enforcement of such ordinances against Jehovah's witnesses this court is not left to its uncontrolled judgment. The Supreme Court has recently had before it cases in which the activities of Jehovah's witnesses were under consideration. See *LOVELL v. CITY OF GRIFFIN*, 303 U. S. 444; *SCHNEIDER v. IRVINGTON*, 308 U. S. 147; *CANTWELL v. CONNECTICUT*, 310 U. S. 296. In each of these cases a Witness was selling Watch Tower publications upon the street and by house-to-house canvass without having obtained the permit prescribed by an ordinance of the municipality for such actions. The Court held that the enforcement of the ordinance against Jehovah's witnesses was invalid in that it infringed upon his right to freedom of speech, of press and of religion granted him by the First and Fourteenth Amendments to the Constitution. The facts in the case cited are so closely parallel with those of the instant cases that it is unnecessary for this court to do other than refer to the cited cases in support of its finding that plaintiffs are entitled to decrees by which the defendant boroughs and their officers are enjoined from en-

forcing the ordinances in question against Jehovah's witnesses when engaged in the advocacy of their religious views by the sale of books, periodicals and tracts.

It may be noted, however, that the instant cases differ from those cited in that the latter were appeals from State appellate courts which had passed upon sentences of lower courts, while the plaintiffs herein are seeking injunctions against threatened future enforcement of the ordinances against Jehovah's witnesses, but not upon any prior convictions against them. This difference in situation is of no moment, owing to the continuing nature of the acts of the defendants. Ordinarily a court of equity will not intervene to enjoin procedure under criminal statutes, but will do so to prevent continuing invasion of property or constitutional rights. *TERRANCE v. THOMPSON*, 263 U. S. 197; *HAGUE v. C. I. O., ET AL.*, 307 U. S. 496. Appeals from the Court of the Burgess of the borough, through the courts of the State to the Supreme Court of the United States would not furnish prompt and complete relief under the circumstances of the instant cases.

The ordinances of the defendant boroughs have each substantially the requirement, under penalty, that a license must be obtained from a borough officer before periodicals, tracts, etc., may be distributed in the borough, and this requirement, as stated supra, tends to deprive plaintiffs of their constitutional rights. The ordinance of the Borough of Monessen, in addition, required the applicant to salute the American flag as a requisite to a license. A license not being required, such provision is immaterial. Its inclusion in a hawking ordinance is far from bringing the ordinance within the scope of *MINERSVILLE SCHOOL DISTRICT v. GOBITIS*, 310 U. S. 586, 594, opinion by Mr. Justice Frankfurter. The ordinance is not a "general law not aimed at the promotion or restriction of religious beliefs", but quite evidently one having in contemplation Jehovah's witnesses and their beliefs—although doubtless inspired by a sincere, although misdirected, feeling of loyalty.

Let separate decrees be presented in accordance with the foregoing discussion after notice to counsel for the respective defendants.

Decree

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF PENNSYLVANIA

Pittsburgh Division

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn, and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette, (Pennsylvania), a
municipal corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette (Pennsylvania),
Defendants.

This cause came on for final hearing on February 21, 1941 and came the plaintiffs by their attorneys and came also the defendants by their attorneys and the parties announced ready for trial.

Thereupon the court considered the complaint and the answer of said defendants and heard evidence introduced by the parties and thereupon the matter was argued to the court by counsel and on the 24th day of February 1941 the court took the case under advisement and thereafter counsel prepared and submitted briefs:

And the court having fully considered the pleadings, the facts, the arguments of counsel and briefs submitted, and being fully advised in the premises did on May 2, 1941, pur-

suant to Rule 52 of the Rules of Civil Procedure, file herein its special findings of fact and conclusions of law are made a part hereof together with the court's discussion and memorandum of the law of the case.

And now, to wit, on this 13th day of May, 1941, it is hereby ordered, adjudged and decreed by the court that the said defendants, their agents, servants and employees and each of them be permanently enjoined from enforcing, as to plaintiffs and all other of Jehovah's witnesses for whom plaintiffs sue herein, said ordinance described in the complaint and reading as follows:

"ORDINANCE No. 60 of the City of Jeannette

"That all persons canvassing for or soliciting within said Borough (now City) of Jeannette orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50, for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty (\$20.00) Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction,

tion before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days."

And it is further ordered, adjudged and decreed that the said defendants and their agents, servants and employees and each of them be permanently enjoined from molesting, obstructing or in any way interfering (under authority of the above described ordinance) with plaintiffs or any other of Jehovah's witnesses on whose behalf this action is brought, for or on account of the activities of plaintiffs or said other persons in distributing any magazines, books, booklets, pamphlets, tracts, leaflets, or periodicals of the character described in the evidence and complaint within the said City of Jeannette, whether by gift or sale.

It is further ordered, adjudged and decreed that all costs of this suit be taxed against the defendants.

Done and dated at Pittsburgh, Pennsylvania, on this 13th day of May, 1941.

R. M. GIBSON
Judge, United States District Court
for the
Western District of Pennsylvania

Certificate**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn, and Robert
Murdock, Jr., *Plaintiffs,*

v.

No. 1206
Civil Action

City of Jeannette, (Pennsylvania), a
municipal corporation, and John M.
O'Connell, individually and as Mayor
of City of Jeannette, (Pennsylvania)

I, G. H. Berger, Clerk of the United States District
Court for the Western District of Pennsylvania, do hereby
certify that the attached and foregoing documents are true
copies of the original papers on file in the United States Dis-
trict Court for the Western District of Pennsylvania, in the
case of Robert L. Douglas, et al. vs. City of Jeannette, et al.

WITNESS my hand and the seal
of this Court, this 10th day of
September, 1941.
G. H. BERGER, Clerk

Docket Entries

In The UNITED STATES CIRCUIT COURT OF APPEALS For the Third Circuit

No. 7793

October Term, 1941.

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Appellees*,

vs.

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Appellants.

Aug. 2, 1941	Notice of Appeal filed.
Aug. 2, 1941	Appearances of counsel entered.
Sept. 9, 1941	Order extending time for completing Record ten days to Sept. 16, 1941, filed.
Sept. 11, 1941	Transcript of Record from District Court filed.
Sept. 11, 1941	Copy of Transcript of Record from the District Court filed.
Sept. 20, 1941	Transfer to Argument List.
Oct. 15, 1941	Praecipe for Appearance of Hayden C. Covington for Appellee filed.
Oct. 21, 1941	Petition for Leave to extend time for filing Appellants brief filed.
Oct. 21, 1941	Submitted on Petition, Coram: Biggs, Maris and Goodrich, J. J.

- Oct. 21, 1941 Order extending time for filing Appellants' brief to Nov. 11, 1941, filed.
- Nov. 17, 1941 Brief for Appellants and Appendix filed.
- Dec. 5, 1941 Brief for Appellees and Appendix filed.
- Dec. 6, 1941 Acceptance of Service of Appellees' Brief filed.
- Dec. 10, 1941 Praecipe for Appearance of Joseph F. Rutherford for Appellees filed.
- Dec. 15, 1941 Heard on Appellees' Motion for Postponement, Coram, Biggs, Maris and Goodrich, J.J. Granted to week of Jan. 5, 1942.
- Jan. 7, 1942 Argued—Coram: Biggs, Maris & Jones, J. J.
- June 3, 1942 Order directing Reargument before Court en banc on June 15, 1942, filed.
- June 15, 1942 Reargued, Coram: Biggs, Maris, Jones & Goodrich, J. J.
- June 17, 1942 Appellants' Memorandum of Authorities on Reargument filed.
- June 18, 1942 Appellees' Memorandum of Authorities on Reargument filed.
- Aug. 31, 1942 Opinion of the Court by Maris, J. filed.
- Aug. 31, 1942 Dissenting Opinion by Jones, J. filed.
- Aug. 31, 1942 Order Reversing Decree etc. filed.
- Aug. 31, 1942 Copy of opinion to Kunkel, Walthour and Trescher.
- Sept. 2, 1942 Designation of Record to accompany Petition to Supreme Court for Certiorari filed.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 7793.October Term, 1941

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROLL CHRISTO-
PHER, VICTOR SWANSON, NICHOLAS KODA,
CHARLES SEDERS, ROBERT LAMBORN and
ROBERT MURDOCK, Jr.,

v.

CITY OF JEANNETTE (Pennsylvania), a Municipal Cor-
poration, and JOHN M. O'CONNELL, Individually
and as Mayor of City of Jeannette (Pennsylvania),
Appellants.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

OPINION

(Filed August 31, 1942).

Before BIGGS, MARIS, JONES and GOODRICH, *Circuit Judges.*

MARIS, Circuit Judge.

The plaintiffs,¹ members of a sect known as Jehovah's Witnesses, brought suit in the district court for themselves and "for all Jehovah's Witnesses throughout the entire Commonwealth of Pennsylvania and adjoining states" to enjoin the defendant city of Jeannette and its Mayor from enforcing against them and other members of the Jehovah's Witnesses a certain ordinance of that city, which is a municipal corporation organized under the laws of Pennsylvania. After hearing, the court below concluded that the ordinance, as applied by the municipality's officers, to the activities of the Jehovah's Witnesses, worked a deprivation of their freedom of worship, of speech and of press in violation of the Fourteenth Amendment of the Constitution of the United States. Accordingly, the court entered the decree from which the defendants took the instant appeal.

The appeal raises two questions, (1) whether the District Court had jurisdiction of the cause, and (2) whether the ordinance is unconstitutional as applied to the activities of the plaintiffs and others of the Jehovah's Witnesses.

In part here material, the ordinance² provides that all persons canvassing for or soliciting orders, within the city of Jeannette, for goods, wares and merchandise of any kind shall procure from the Mayor of that city a license, paying therefor to the city's Treasurer a fee of \$1.50 a day with

¹ Of the nine plaintiffs, seven are citizens of Pennsylvania, one of Ohio and one of West Virginia.

² The ordinance in full is as follows:

"Ordinance No. 60 of the City of Jeannette:

"That all persons canvassing for or soliciting within said Borough [now City] of Jeannette orders for goods, paintings, pictures, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50, for 1 week, seven \$7.00 Dollars, for two weeks twelve \$12.00 Dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

relative reductions in the per diem rates for longer term licenses.

The Jehovah's Witnesses are an unincorporated body of persons who profess themselves to be acting in obedience to the commands of Almighty God as revealed by the Bible. Each of the members of the group asserts that he is an ordained minister and that he is required by his faith to give witness to the name, honor and majesty of Almighty God by preaching the gospel, as understood by them, upon the streets of communities, and by distributing certain literature, for a specified contribution, to people upon the streets and in their homes. The literature, which is published or issued by the Watchtower Bible and Tract Society, Inc., a New York corporation, is in the form of books, pamphlets and periodicals, and is intended to inform and persuade the persons receiving it of the merit of the religious beliefs of Jehovah's Witnesses, who personally and in the literature strongly attack the religious practices of organized churches existing today.

The plaintiffs, along with other members of the Jehovah's Witnesses, went to the city of Jeanette, and upon going from house to house, played on portable phonographs records of matter which they desired to impart to their auditors, to whom they then offered the books and pamphlets

(Footnote 2 continued)

"That all persons huckstering, peddling or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the sum of ten (\$10.00) Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days."

of the sect in exchange for a contribution, so-called, of twenty-five cents for a book and five cents for a pamphlet or two. There is evidence that at times one or more of the publications were given free if the particular auditor appeared to be interested but was without the means to make the requested contribution. Such gratuitous distribution was necessarily limited as the solicitors are required to pay the Watchtower Bible and Tract Society for the literature which they distribute. The publications were also offered on like conditions to people upon the streets of the city.

In March 1939 the city officials of Jeannette notified the Jehovah's Witnesses that it was necessary for them to procure licenses, as provided by the ordinance, if they desired to solicit from house to house, and that, failing so to comply, they would be arrested for violating the ordinance. On April 2, 1939, a letter signed by some fifty members of the Witnesses, including most of the plaintiffs, was delivered to the police and Mayor of Jeannette informing them that they refused and would continue to refuse to obtain licenses on the ground that they were not peddlers but ministers of Jehovah God doing their work in obedience to His explicit command and that for them to seek a permit to do what they were so commanded would be an insult to the Creator as His law is supreme and above all human law.

Having thus refused to procure licenses, a number of the Jehovah's Witnesses renewed their door to door canvassing and soliciting in the city of Jeannette on April 2, 1939. On that occasion (a Sunday) more than one hundred of them descended upon the city and proceeded to canvass and solicit from house to house throughout the day. During that visitation the time of the City's police and firemen was preempted in receiving and investigating numerous complaints from citizens because of the activities of the Witnesses, twenty-one of whom were arrested at that time for violating the ordinance. Eighteen of those arrested were held for a hearing before the Mayor's court, where they were convicted of the violations charged. Appeals to the

Quarter Sessions Court of the local jurisdiction (Westmoreland County) from the convictions in the Mayor's court were dismissed because of the appellants' failure to attach transcripts of the records of conviction in the Mayor's court and, also, because of a decision by the Pennsylvania Superior Court (*Pittsburgh v. Ruffner*, 134 Pa. Superior Ct. 192) upholding the validity and like enforcement of a somewhat similar ordinance. A joint appeal to the Pennsylvania Superior Court from the judgments of the Quarter Sessions Court was also dismissed because the record presented no basis for holding that there had been an abuse of discretion on the part of the Quarter Sessions Court.³ An appeal to the Supreme Court of Pennsylvania from the judgment of the Superior Court was likewise refused.⁴ The defendants then petitioned the Supreme Court of the United States for certiorari, which was denied, as was also their petition for rehearing.⁵

Since April 1939 the Jehovah's Witnesses have continued their house to house canvass in the city of Jeannette, offering their literature and soliciting contributions. At no time have they applied for or procured licenses as required by the ordinance, and arrests and convictions for violations of the ordinance continued. Exclusive of the twenty-one arrests made on April 2, 1939, more than thirty arrests were made from then until February 1940, when the latest arrests were made. Appeals from convictions on the later arrests are still pending in the Quarter Sessions Court of Westmoreland County, Pennsylvania. It was in that situation that the suit for an injunction was instituted in the court below.

³ *Commonwealth v. Stewart*, 137 Pa. Superior Ct. 445, 448.

⁴ See 137 Pa. Superior Ct. XXXIII, under "Allocaturs refused by the Supreme Court of Pennsylvania".

⁵ *Stewart v. Pennsylvania (City of Jeannette)*, 309 U. S. 674, rehearing den. 309 U. S. 699.

We shall consider first the question whether the district court had jurisdiction of the cause of action. The complaint alleges that jurisdiction exists under and by virtue of the Civil Rights Act of 1871, now Section 1979 Revised Statutes (8 U.S.C.A. § 43),⁶ which confers a personal right of action at law or in equity for the redress of "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws", and Section 24 (14) of the Judicial Code (28 U.S.C.A. § 41 (14)),⁷ which confers upon the district courts jurisdiction of suits brought under the authority of Section 1979 Revised Statutes.⁸ The rights of which the plaintiffs allege they have been deprived by the defendants under color of the ordinance in question are their rights to freedom of speech, freedom of the press, freedom of assembly and freedom of religious worship. In paragraph 17 of the complaint⁹ it is expressly averred that the ordinance has been applied by the defendants against the plaintiffs so as to deprive them of these rights "contrary to the Federal Constitution, Fourteenth Amendment, Section 1." Since these rights are not privileges or immunities of national

⁶ Section 1979 Revised Statutes is as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

⁷ Section 24(14) of the Judicial Code is as follows:

"The district courts shall have original jurisdiction as follows:

"Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

⁸ *Hague v. C. I. O.*, 307 U. S. 496; 508, 529, 530.

⁹ Paragraph 17 of the complaint is as follows:

"That the above described ordinance of said City of Jeannette is unconstitutional and void as construed and applied by defendants

citizenship¹⁰ and since a denial of the equal protection of the laws is not involved, the reference must necessarily be to the provision of the Fourteenth Amendment that no state shall "deprive any person of . . . liberty . . . without due process of law."

Freedom of worship, freedom of speech, freedom of the press, and the right of assembly are not the subject of direct constitutional grant. They are, however, constitutionally recognized and confirmed as attributes of liberty incident to all persons under the Constitution and laws of the United States regardless of their citizenship; and, as such, they are secured by the First Amendment against abridgment by the Congress, and by the Fourteenth Amendment against deprivation by a state without due process of law.¹¹ It is now settled that they are rights "secured" by the Constitution within the meaning of Section 1979 Revised Statutes and Section 24(14) of the Judicial Code.¹² It follows that if the complaint sufficiently alleges deprivation of these rights without due process of law the jurisdiction of the district court must be sustained, since jurisdiction to hear a suitor's complaint depends upon what he states his complaint to be and not upon whether at the hearing he is able

(Footnote 9 continued)

against plaintiffs because as so construed and applied each of the provisions of said ordinance has been used and will be used unlawfully to deny and deprive plaintiffs and others of Jehovah's witnesses of their 'civil rights' of freedom of speech, of press and of assembly, and freedom to worship Almighty God according to dictates of their consciences, all contrary to the Federal Constitution, Fourteenth Amendment, Section 1."

¹⁰ See Justice Stone's discussion of this subject in *Hague v. C. I. O.*, 307 U. S. 496, 520-522 (1938).

¹¹ *Chaplinsky v. State of New Hampshire*, U. S. (1942); *Cantwell v. Connecticut*, 310 U. S. 296, 303; *Hague v. C. I. O.*, 307 U. S. 496, 519; *Lovell v. Griffin*, 303 U. S. 444, 450; *DeJonge v. Oregon*, 299 U. S. 353, 364; *Grosjean v. American Press Co.*, 297 U. S. 233, 243-244; *Near v. Minnesota*, 283 U. S. 697, 707; *Stromberg v. California*, 283 U. S. 359, 368; *Gitlow v. New York*, 268 U. S. 652, 666.

¹² *Hague v. C. I. O.*, 307 U. S. 496, (1939).

to establish its merit.¹³ For were we to hold that jurisdiction exists only if the proven facts justify the conclusion that there has been a deprivation of liberty without due process of law it would necessarily follow that in every such case the court would have to hear and decide the merits of the controversy before deciding whether it had power to hear and decide the merits. This would be a manifest absurdity.

The complaint, as we have seen, merely alleges in effect that the plaintiffs have been deprived of their liberty without due process of law. The due process of law which is claimed to have been absent is in no way spelled out. This, it is urged, renders the complaint insufficient to establish jurisdiction. It is said that the facts showing a want of due process should have been alleged. But we think they need not, indeed cannot, be set out where substantive rather than procedural rights are concerned. The impossibility of particularizing the absence of due process of law in pleading a violation of the due process clause as the basis for the jurisdiction of the district court is due primarily to the undefined and ever changing character of the concept involved. An examination of the cases discloses that the Supreme Court has consistently refused to attempt a comprehensive definition of what is meant by due process.

¹³ *Mosher v. Phoenix*, 287 U. S. 29 (1932). In *Minersville District v. Gobitis*, 310 U. S. 586 (1940), the plaintiffs sought to enjoin the defendants from enforcing a school board regulation which required pupils to salute the flag as a condition to attendance at the public schools. The district court concluded that it had jurisdiction and that the plaintiffs had been deprived of their liberty and property without due process of law. It issued an injunction and was affirmed by the Circuit Court of Appeals. The Supreme Court reversed, concluding that the plaintiffs had not been deprived of their liberty and property without due process because it was the proper exercise of the state's governmental function to adopt appropriate means to evoke national unity among school children. This was a ruling that the plaintiffs had not made out a cause of action. Although exactly the same facts were relied upon for jurisdiction which the Supreme Court concluded were insufficient to state a cause of action it did not remand to the district court with directions to dismiss the bill in equity for want of jurisdiction or indicate in any other way that jurisdiction was lacking.

of law.¹⁴ Such definitions as it has formulated have been so restricted to the facts of the particular cases before it as to render them inapplicable as statements of general principles. Then also for many years after the inclusion of the due process clause in the Fourteenth Amendment the cases were concerned with due process of law solely in its procedural aspect. Indeed this was so generally the case that it was at one time thought that the due process clause applied only to procedural rights.¹⁵ Gradually, however, the scope of the phrase was broadened by judicial construction and substantive rights were recognized to be embraced within its protection.¹⁶ Due process of law thus came to be recognized as representing the limits which the Constitution places upon that exercise by the state of its sovereign power which infringes the traditional and constitutionally secured rights and liberties of the individual.

Considered as a touchstone by which the inevitable conflicts between the broad sweep of the state's sovereign power

¹⁴ *Davidson v. New Orleans*, 96 U.S. 97, 101 (1877); *Orient Insurance Company v. Daggs*, 172 U.S. 557, 563 (1898); *Ballard v. Hunter*, 204 U.S. 241, 255 (1907); *Twining v. New Jersey*, 211 U.S. 78, 99, 100 (1908); *Belts v. Brady*, U.S. (1942); see also *Kales*—"Due Process" *The Inarticulate Major Premise* (1917) 26 *Yale L.J.* 519.

¹⁵ *Reeder, The Due Process Clauses and "The Substance of Individual Rights"* (1910) 49 *U. of Pa. L. Rev.* 191.

¹⁶ In *Chicago, Burlington, & N. R'd. v. Chicago*, 166 U.S. 226, 234, 235 (1896) Justice Harlan said: "But a State may not, by any of its agencies, disregard the prohibition of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment."

In *Buck v. Bell*, 274 U.S. 200, 207 (1927) Justice Holmes said: "There can be no doubt that so far as procedure is concerned the rights of the patient are most carefully considered, and as every step in this case was taken in scrupulous compliance with the statute and after months of observation, there is no doubt that in that respect the plaintiff in error has had due process of law. The attack is not upon the procedure but upon the substantive law."

In *Whitney v. California*, 274 U.S. 357, 373, (1927) Justice Brandeis said: "Despite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as to matters of procedure."

and the cherished rights and liberties of the citizen are to be resolved the concept of due process of law could no longer be restricted to the definite issues of fact which are involved in purely procedural questions but inevitably entered into the realms of political, social and economic theory and became purely a matter of judgment on the part of the ultimate tribunal.¹⁷ The presence or absence of due process of law thus came to be decided in accordance with the philosophical views of a majority of the justices of the Supreme Court before whom the controversy was argued. The philosophy which stressed the property rights of the individual was inclined to see in the most socially desirable legislation a denial of due process, while the point of view which accorded first consideration to the good of the whole saw no unconstitutional deprivation of property in the most

¹⁷ In argument in the Supreme Court in *Adkins v. Children's Hospital*, 261 U. S. 525, 530, 531, counsel for the appellants, now a justice of that court, ably characterized the essential nature of due process of law as follows: "This Court has consistently recognized the futility of defining 'due process'. The 'due process' clauses embody a standard of fair dealing to be applied to the myriad variety of facts that are involved in modern legislation. That is why this Court has refused to draw lines in advance. The impact of facts must establish the line in each case. The application of 'due process' clauses is, in the last analysis, a process of judgment by this Court. In the application of the varying facts to the test of fair dealing the ultimate question in this Court is, does legislation, or its actual operation, 'shock the sense of fairness the Fourteenth Amendment was intended to satisfy in respect to state legislation'?" *Chicago & N.W. Ry. Co. v. Nye*, *Schneider Fowler Co.*, 260 U. S. 35. During the fifty years of extensive judicial unfolding, the central ideas that inhere in this constitutional safeguard have become manifest. A careful study of the long line of cases especially dealing with the 'due process' clause, beginning with the *Slaughter-House Cases*, 16 Wall. 36, shows two dominant ideas conceived to be fundamental principles: (1) Freedom from arbitrary or wanton interference, and (2) protection against spoliation of property. 'Arbitrary,' 'wanton' and 'spoliation' are the words which are the motif of the decisions under the 'due process' clauses. That is as close as we can get to it; it is close enough when dealing with the great questions of government. What it means is that the Fourteenth Amendment intended to leave the States the free play necessary for effective dealing with the constant shift of governmental problems, and not to hamper the States except where it would be obvious to disinterested men that the action was arbitrary and wanton, and therefore spoliative and unjustified."

drastic and far reaching of enactments.¹⁸ When personal liberties, rather than property rights, were involved the emphasis was shifted. Thus we find that while in recent years as the Supreme Court has increasingly recognized the right of a state in the exercise of its sovereign power incidentally to deprive individuals of their property, there has at the same time been definitely greater emphasis placed by the court upon the importance of the personal liberties secured to the individual by the Constitution and increased recognition of the place of the due process clause in protecting those liberties from impairment by the state. A realistic view of the changing interpretation of the due process clause compels the view that whether applied to the exercise of the police power, the taxing power, the power of eminent domain or any other power inherent in sovereignty, the due process clause has been a potentially restrictive force only when the numerical preponderance of justices of the Supreme Court has accorded the rights of the individual the prime consideration.

It must, therefore, be concluded that, except for cases involving purely procedural due process, it is not facing reality to say that the want of due process of law is a question of fact. On the contrary, it is, as we have seen, a legal or, more accurately, a philosophical concept as to the extent to which the state, in the exercise of its sovereign power, should be permitted to deprive individuals within its jurisdiction of their lives, liberty or property.¹⁹ Its application to

¹⁸ Compare the reasoning in *Lochner v. New York*, 198 U. S. 45 (1905) with that in *Bunting v. Oregon*, 243 U. S. 426 (1917); *Adkins v. Children's Hospital*, 261 U. S. 525 (1923) with *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937); *New State Ice Co. v. Liebmann*, 285 U. S. 262 (1932) with *Nebbia v. New York*, 291 U. S. 502 (1934). See also *Cushman-Social and Economic Interpretation*, (1922) 20 Mich. L. Rev. 737.

¹⁹ That "due process of law" is a philosophical concept of the character suggested rather than a factual one is highlighted by the recent five to four decision of the Supreme Court in three cases, one of which (*Bowden v. City of Forth Smith*) is indistinguishable from the case before us. In those cases (reported sub nom. *Jones v. City of Opelika*, U. S. (1942) as in this, the City ordinances required all persons following certain specified businesses, trades or vocations

the facts of a particular case is purely a matter of judgment and therefore is solely a question of law. The most, therefore, that the pleader is required to do in a case of the kind now before us is to set out those facts upon which he relies to prove a deprivation of life, liberty or property by the state and to aver that the deprivation was beyond that which, under our Constitution, is allowable to the state in the exercise of its sovereign power, or, in the language of the Fifth and Fourteenth Amendments, that it was without due process of law.²⁰

The plaintiffs' complaint in the present case meets this requirement. Shorn of all surplusage, the complaint alleges that the complainants sell books and pamphlets which embody their educational and religious ideas and that the defendants, acting under color of the city ordinance, seek to prevent them from thus disseminating their ideas unless they pay a tax levied upon the privilege. If the enforcement of such payments by the city in the exercise of the police or taxing powers of the state arbitrarily or unreasonably abridges the constitutional liberties of the complainants it

(Footnote 19 continued)

to pay a fixed sum for the privilege. Members of the religious sect known as Jehovah's Witnesses sold books and pamphlets without making any payments and were arrested and convicted of violating the ordinances. They argued that the convictions were invalid because the ordinance as applied to them was unconstitutional since it deprived them of their freedom of speech, press and religion without due process of law. Five justices interpreted the ordinances as providing for the collection of a nondiscriminatory license fee and concluded that their enforcement against those selling books and other publications was a proper regulatory measure within the State's police power to which the liberties of the individual must yield. Four justices construed the ordinances as tax measures which when applied to the dissemination of ideas, educational and religious, became instruments to suppress or even destroy the free exercise of speech, press and religion and therefore violative of the due process clause of the Fourteenth Amendment.

²⁰ In *Columbus Ry. & Power Co. v. Columbus*, 249 U. S. 399, 406 (1918), Justice Day said: "We are of opinion that there was jurisdiction in the District Court to entertain the bill as it presented questions arising under the Fourteenth Amendment to the Federal Constitution not so wholly lacking in merit as to afford no basis of jurisdiction. Jurisdiction does not depend upon the decision of the case, and should be entertained if the bill presents questions of a character giving the party the right to invoke the judgment of a federal court."

is without due process of law and therefore is in violation of the Fourteenth Amendment as a matter of law. As we have seen, the plaintiff's complaint contains an allegation of such a violation. It follows from what has been said that the complaint sufficiently alleges a deprivation of liberty without due process of law. We accordingly held that the district court had jurisdiction of the cause of action disclosed in the complaint. We may add that in this conclusion we are supported by the decision of the Circuit Court of Appeals for the Tenth Circuit in *Oney v. Oklahoma City*, 120 F. 2d 861 (1941) and of the Circuit Court of Appeals for the First Circuit in *City of Manchester v. Leiby*, 117 F. 2d 661 (1940), cert. den. 313 U. S. 562.

We are thus brought to the merits of the case. In view of the fundamental importance of the question involved we think it not improper to say that Judge Biggs and the writer of this opinion in harmony with the views expressed by Chief Justice Stone and Justice Murphy and concurred in by Justices Black and Douglas in the case of *Bowden v. City of Fort Smith*, U. S. (decided June 8, 1942, would, if free to do so, vote to hold that the district court was right in concluding that the ordinance of the City of Jeannette is unconstitutional as applied to the activities of the plaintiffs and their associates.²¹ The case before us is, however, indistinguishable from the case just cited and we are, therefore, constrained by the decision of the majority of the Supreme Court in that case to hold to the contrary.

Accordingly the decree of the district court is reversed and the cause is remanded with directions to dismiss the complaint.

JONES, *Circuit Judge, dissenting.*

As I read the bill of complaint, the plaintiffs fail to plead a case cognizable in a District Court. I should, there-

²¹ Judge Goodrich deems it inappropriate to express his individual views as to the merits of the case in view of the controlling decision of the Supreme Court in *Bowden v. City of Fort Smith*, supra.

fore, reverse the decree below and remand with directions to the District Court to dismiss the complaint for want of jurisdiction.

That a District Court has jurisdiction under Sec. 24 (14)¹ of the Judicial Code of a cause of action under R.S. §1979² is, of course, not disputed. See *Hague v. C.I.O.*, 307 U.S. 496, 508, 529, 530. The question here *in limine* is whether the bill of complaint alleges a cause within the jurisdiction conferred by Sec. 24 (14). Plainly enough, it is not all state deprivation of liberty which the Fourteenth Amendment of the Constitution inhibits but only such as is effected without due process of law. Not liberty, but security against undue state deprivation thereof is the right which the Fourteenth Amendment secures in material regard. What R.S. §1979 in turn confers is a right of action for the redress of the deprivation of a right secured by the Constitution and laws.

Certain it is that a District Court exercises only such jurisdiction as has been expressly conferred upon it by an Act of Congress. *Kline v. Burke Construction Company*, 260 U.S. 226, 234. Consequently, it is incumbent upon one who seeks the aid of a District Court to make out a case for jurisdiction. This should be made affirmatively to appear by the allegations of the bill. *Mosher v. City of Phoenix*, 287 U.S. 29, 30; *Norton v. Larney*, 266 U.S. 511, 515; *McCain v. Des Moines*, 174 U.S. 168, 181. Unless that be done, jurisdiction must be deemed not to exist. Cf. *Norton v. Larney*, *supra*, pp. 515, 516. As the right to strike down state action through invocation of federal jurisdiction is a high privilege and one which necessarily involves the relation between the national and local governments, the specified requirements for a District Court's exercise of jurisdiction should no less be met in such instance. The plaintiffs should, therefore, be required to aver facts which show, or at least tend to show,

¹ 28 U.S.C.A. Section 41 (14).

² Act of April 20, 1871, c. 22, §1, 17 Stat. 13, as modified and reenacted by R.S. §1979, 8 U.S.C.A. §43.

what amounts to the state's denial of their liberty without due process of law before they may assert a right of action under R.S. §1979 or invoke the court's jurisdiction under Sec. 24 (14).

Substantially, all that the bill of complaint in this case avers is the plaintiffs' membership in the sect known as Jehovah's Witnesses, their canvassing and soliciting in the Borough of Jeannette for the distribution of books and pamphlets for a specified contribution without procuring a vendor's license as required by a borough ordinance, their arrest for violating the ordinance, hearings on the charges, convictions and appeals to the courts of the state. Not once throughout their lengthy bill of complaint do the plaintiffs aver a fact from which it can even be inferred, as a matter of law, that they were denied due process either substantively or procedurally. They make no assault upon the validity of the ordinance as being either arbitrary, discriminatory or capricious.³ Specifically, the bill contains no averment that the ordinance, either upon its face or as administered, prohibited all canvassing or soliciting within the municipality. Cf. *Lovell v. Griffin*, 303 U. S. 444. It is not even averred that the ordinance was ever enforced with respect to more than house-to-house canvassing. There is no averment that the ordinance either creates or was utilized to create a discretionary censorship in anyone. Cf. *Schneider v. State*, 308 U. S. 147. Nor is there any averment that the ordinance, by its terms or as administered, discriminates against any group of applicants for licenses. In addition to this, there was open to the plaintiffs and they exercised, as the bill discloses, a right of appeal to courts of record in the state; and there is no suggestion that the plaintiffs were ever proceeded against for violating the ordinance except by means of legal process or that a hearing before a judicial tribunal on charges of violating the ordinance was ever denied them. Cf. *Hague v. C.I.O.*, *supra*.

³ The ordinance, which was enacted in 1898, was of the familiar hawker or vendor type widely adopted and long used by municipalities.

In one instance, they do refer to their hearings in the Mayor's court as "mock" but do not hint at a fact to support the characterization.

Having thus failed to aver facts showing any want of due process, the plaintiffs contented themselves with a bald conclusion of law to the effect that the defendants' enforcement of the ordinance as to them deprived them of freedom of worship, speech and press "contrary to the Federal Constitution, Fourteenth Amendment, Section 1".⁴ The majority say that this general allegation, taken in conjunction with the recitals as to enforcement of the ordinance and the plaintiffs' desire to distribute books and pamphlets without municipal license, is sufficient to spell out a case of unconstitutional state deprivation of liberty and hold in substance that the presence or absence of due process of law, where civil rights are said to be involved, depends upon the philosophical concept thereof on the part of the judges to whom the matter is addressed.

True enough, the term "due process of law" cannot, in the abstract, be defined with nicety or precision. It is also true that the very indefiniteness of the term renders it adaptable to changed conceptions which have received general acceptance. That views may change as human experiences widen and knowledge accumulates with the passing of time is but natural. And it is equally natural that such changes should reflect themselves in the law when a word so relative as the word "due" is the subject for recurring interpretation in different circumstances. But that does not mean that there is never a present standard by which the dueness of legal process may be adjudged. The decided cases contemporaneously sketch out a pattern of its instant measure. It is at all times a shield against arbitrary, discriminatory or capricious legislative or other governmental action. By that standard, it was the duty of the plaintiffs to show by the allegations of their bill a case of the state's

⁴ See paragraph 17 of the bill of complaint quoted in full in footnote 9 of the majority opinion, ante, p. 6.

wrongful deprivation of their freedom of worship, speech or press. This they failed to do.

No case has been cited which appears to hold that, in order to invoke federal jurisdiction to restrain a state's alleged deprivation of life, liberty or property, all that is necessary is an allegation that the Fourteenth Amendment is being violated. Furthermore, the general language of decided cases is to be read in the light of what was actually before the courts. In *Columbus Railway, Power & Light Company v. City of Columbus*, 249 U. S. 399, cited by the majority, the bill of complaint which, as the Supreme Court said, "presented questions arising under the Fourteenth Amendment to the Federal Constitution not so wholly lacking in merit as to afford no basis of jurisdiction" was replete with detailed specification of pecuniary loss to the complainant railway through the defendant municipality's insistence upon continued transit service under local franchise ordinances for inadequate and confiscatory rates of fare according to the facts averred in the bill. Of course, there was jurisdiction there. The bill showed, *prima facie*, a deprivation of property without due process of law.

As I read the opinion of Justice Stone in the Hague case, it seems implicit that a showing of a want of due process is essential to an invocation of the jurisdiction under Sec. 24 (14) of an action under R.S. §1979 for the redress of the deprivation of a right secured by the due process clause of the Fourteenth Amendment. The bill of complaint in the Hague case, whereby the jurisdiction was to be adjudged, fairly bristled with allegations of fact showing an arbitrary, discriminatory and even violent deprivation of the complainants' freedom of speech, press and assembly, all done by municipal officers of Jersey City under color of enforcing a city ordinance. Certainly, Justice Stone's opinion in the Hague case provides no implication that all that is necessary to jurisdiction under Sec. 24 (14) to redress an alleged deprivation of liberty is an allegation that the defendants are acting contrary to the Fourteenth

Amendment. If that were so, then the case involving a local ordinance or state statute that could not be taken directly to a District Court for attempted invalidation would, indeed, be difficult to imagine, for the security of the due process clause extends also to life and property. The necessary consequence would be an unwarranted extension of federal jurisdiction over local matters. Yet, a "serious apprehension for the rightful independence of local government" was a reason ascribed by Justice Stone for his dissent from the majority's extension of "privileges or immunities" in *Colgate v. Harvey*, 296 U.S. 404, 436, 445, which, incidentally, was later expressly overruled in *Madden v. Kentucky*, 309 U.S. 83, 93. A like apprehension suggests no less that, where an ordinance does not, on its face or as administered, deprive of life, liberty or property either arbitrarily, discriminatorily, or capriciously, and there has been no denial of procedural due process, the interpretation of the ordinance and the manner of its administration should, in the first instance, be left to the courts of the state.⁵

The opinion of Justice Roberts in the Hague case cannot be said to furnish the plaintiffs any support for federal jurisdiction under the averments of their bill. The right of action under R.S. §1979, which Justice Roberts perceived under the bill in the Hague case, was for the redress of state abridgment of the complainants' privileges and immunities as citizens, contrary to the Fourteenth Amendment. What it is necessary to aver in order to plead jurisdiction of a case under the due process clause of the Fourteenth Amendment, was, therefore, neither germane nor considered. A want of due process is not a condition of the security against state abridgment which the Fourteenth Amendment gives to citizens in respect of their privileges

⁵ *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 499-500; *Thompson v. Magnolia Co.*, 309 U.S. 478, 484; *Lindsey v. Washington*, 301 U.S. 397, 400; *Bevins v. Prindable*, 39 F. Supp. 708, Washington, 301 U.S. 397, 400; *Bevins v. Prindable*, 39 F. Supp. 708, 713 (E.D. Ill.), a three judge court, where Jehovah's Witnesses assailed an Illinois statute as invalid under the Fourteenth Amendment.

and immunities. Moreover, even though the present plaintiffs are citizens, the redress which they seek is not for the abridgment of privileges or immunities attending their national citizenship. The rights which they assert are attributes of the liberty incident to all persons subject to the jurisdiction of the United States regardless of their citizenship.

In *Minersville District v. Gobitis*, 310 U. S. 586, the matter of jurisdiction was not passed upon by the Supreme Court. The District Court had expressly found that jurisdiction of that case did not exist under Sec. 24 (14) but did exist under Sec. 24 (1). *Gobitis v. Minersville School District*, 21 F. Supp. 581, 586-587 (E.D.Pa.). In so far as the security afforded by the due process clause of the Fourteenth Amendment was considered by the District Court in the *Gobitis* case, it was only to the extent of perceiving a right in the plaintiffs arising under the Constitution. It was upon that right and an amount in controversy in excess of \$3,000, as found by the court, that jurisdiction of the *Gobitis* case was deliberately laid under Sec. 24 (1); and the Court of Appeals affirmed without mentioning jurisdiction. *Minersville School District v. Gobitis*, 108 F. 2d 683 (C.C.A. 3). In these circumstances it is hard to see how the *Gobitis* case can be thought to imply that, where one invokes jurisdiction under Sec. 24 (14) of a cause of action under R.S. §1979 for alleged state deprivation of liberty, he is under no duty to aver facts showing that the deprivation resulted from a want of due process.

Neither the case of *Oney v. Oklahoma City*, 120 F. 2d 861, 866 (C.C.A. 10), nor the case of *City of Manchester v. Leiby*, 117 F. 2d 611, 664 (C.C.A. 1), cert. den. 313 U. S. 562, seems to have been intended as a definitive ruling as to the scope of the pleading necessary to make out a case for jurisdiction under Sec. 24 (14) of an action under R.S. §1979. In the *Oney* case the District Court had dismissed for lack of jurisdiction, and the Court of Appeals, in reversing and remanding for further proceeding, did so in the expressed

belief that the matter could "best be determined after issues have been made up and a full hearing had." Yet, it has been held (*Mosher v. City of Phoenix*, *supra*, at p. 30) that jurisdiction is not to be determined "by the way the facts turn out or by a decision of the merits." In the *Leiby* case the Court of Appeals held (p. 664) that "freedom of speech, of the press, and of religion are rights 'secured by the Constitution of the United States' within the meaning of Section 24 (14); and that under Section 24 (14) the District Court had jurisdiction of the . . . suit, which is of the sort described in the Civil Rights Act" But that does not conclude what it is necessary for a plaintiff to aver in order to invoke the jurisdiction. As indicated at the outset of this opinion, there can be no doubt that jurisdiction under Sec. 24 (14) is both appropriate and available for a right of action under R.S. §1979 where a cause is shown to exist.

In no event should federal jurisdiction be assumed merely because of its supposed greater convenience for the determination of a constitutional question, as the learned court below apparently conceived (see reference to *Reid v. Brookville*, 39 F. Supp. 30, 32 (W.D.Pa.)). Actual experience shows that the convenience of obtaining a final decision of a constitutional question is equally as great where the litigation is instituted in and proceeded with through the state courts. Except for the *Hague* case, the cases upon which the Supreme Court has passed in recent years (of a nature somewhat similar to the present) went there by appeal from final judgments of state courts.⁶ While nothing is to be deducted from that fact by way of an argu-

⁶ *Cnaplinsky v. State of New Hampshire*, — U. S. — (decided March 9, 1942); *Cox v. New Hampshire*, 312 U. S. 569; *Cantwell v. Connecticut*, 310 U. S. 296; *Schneider v. State*, 308 U. S. 147; *Lovell v. Griffin*, 303 U. S. 444; *Jones v. Opelika*, *Bowden v. Fort Smith*, and *Jobin v. Arizona*, — U. S. — (decided June 8, 1942). *Valentine v. Christensen*, — U. S. — (decided April 13, 1942), which went to the Supreme Court on certiorari to the Court of Appeals for the Second Circuit, furnishes no exception. Jurisdiction in that case rested upon diversity of citizenship and the amount in controversy and not upon Sec. 24 (14) of the Judicial Code.


ment against the existence of jurisdiction in the District Courts, it at least indicates that proceeding through the state courts in local matters with ultimate appeal to the Supreme Court on any constitutional questions arising therein is both an expeditious and efficacious means for obtaining a final decision by the highest federal court. As the Supreme Court's jurisdiction in such regard exists by virtue of Sec. 237 of the Judicial Code (28 U.S.C.A. §344), it is unaffected by the limitations attending the jurisdiction of federal courts of first instance.

The conclusion herein reached with respect to the question of jurisdiction renders inappropriate a consideration of the merits. I, therefore, refrain from expressing any opinion as to the law relating thereto.

A true Copy:

Teste:

*Clerk of the United States Circuit Court of Appeals
for the Third Circuit.*



Judgment

In The
UNITED STATES CIRCUIT COURT OF APPEALS

For the Third Circuit

No. 7793

October Term, 1941

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Appellees*,

vs.

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Appellants.

Appeal from the District Court of the United States,
for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of
record from the District Court of the United States, for the
Western District of Pennsylvania, and was argued by
counsel.

On consideration whereof, it is now here ordered, ad-
judged, and decreed by this Court, that the decree of the
said District Court in this cause be, and the same is hereby
reversed, with costs, and the cause is remanded to the said
District Court with directions to dismiss the complaint.

August 31, 1942

JOHN BIGGS, Jr.
Circuit Judge

Designation of Record

In The

UNITED STATES CIRCUIT COURT OF APPEALS

For The Third Circuit

No. 7793

October Term 1941

Robert L. Douglas, Albert R. Gundecker,
Earl Kalkbrenner, Carroll Christopher,
Victor Swanson, Nicholas Koda, Charles
Seders, Robert Lamborn and Robert
Murdock, Jr., *Appellees*,

v.

Appeal from the
District Court of
the
United States
for the Western
District of
Pennsylvania

City of Jeannette (Pennsylvania), a
Municipal Corporation, and John M.
O'Connell, Individually and as Mayor
of City of Jeannette (Pennsylvania),
Appellants:

TO HONORABLE WILLIAM P. ROWLAND, Clerk of
the above Court.

You will please prepare a printed copy of the entire
record filed in the above entitled and numbered cause for
the purpose of filing with the Clerk of the United States Su-
preme Court to accompany a petition for writ of certiorari
consisting of the following:

- (1) Docket Entries of the Clerk of the District Court.
- (2) Complaint filed in the District Court.
- (3) Answer to the Complaint.
- (4) Transcript of the testimony, consisting of 156 pages

of typewritten evidence prepared by stenographer together with certificates of stenographer and Judge of the United States District Court.

- (5) Opinion of the District Court.
- (6) Conclusions of Law filed by the District Judge.
- (7) Discussion of District Judge.
- (8) Discussion and opinion of District Judge in companion case of Reid et al. v. Brookville et al.
- (9) Decree of the United States District Court.
- (10) Opinion of the United States Circuit Court of Appeals filed August 31, 1942.
- (11) Judgment of the United States Circuit Court of Appeals.
- (12) Copy of this designation.
- (13) Certificate of counsel as to printed record.
- (14) Certificate of Clerk of United States Circuit Court of Appeals.

Dated: September 1, 1942.

HAYDEN C. COVINGTON
Attorney for Appellees

STIPULATION

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

OCTOBER TERM, 1941

No. 7793

■

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEEDERS, ROBERT LAMBORN, and ROBERT
MURDOCK, JR.,

Plaintiffs-Appellees

v.

CITY OF JEANNETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually and
as Mayor of City of Jeannette (Pennsylvania),

Defendants-Appellants

■

It is hereby stipulated that the papers hereinbefore
printed comprise true and correct copies of the record from
the District Court of the United States for the Western Dis-
trict of Pennsylvania and of the record from the United
States Third Circuit Court of Appeals, and that printing of
all exhibits is omitted and said exhibits shall be submitted
in original form to the reviewing Court.

Dated, September 1942.

FRED B. TRESCHER
Irwin Gas Coal Building
Greensburg, Pennsylvania
Attorney for
Defendants-Appellants

HAYDEN C. COVINGTON
117 Adams Street
Brooklyn, New York
Attorney for
Plaintiffs-Appellees

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 450

ORDER ALLOWING CERTIORARI—Filed February 15, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted, and the case is assigned for argument immediately following Nos. 480-487.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4756)

FILE COPY

Office: Supreme Court, U. S.
FILED

OCT 8 1942

SIMMONS ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Number 450

**ROBERT L. DOUGLAS, ALBERT R. GUNDECK-
ER, EARL KALKBRENNER, CARROL CHRIS-
TOPHER, VICTOR SWANSON, NICHOLAS KO-
DA, CHARLES SEDERS, ROBERT LAMBORN,
and ROBERT MURDOCK, JR.,**

Petitioners

v.

**CITY OF JEANNETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually
and as Mayor of City of Jeannette (Pennsylvania),**

Respondents

**Petition for Writ of Certiorari to the
United States Circuit Court of Appeals
for the Third Circuit**

HAYDEN C. COVINGTON,
Attorney for Petitioners

INDEX

SUBJECT INDEX

	PAGE
Summary Statement of Matters Involved	1
Preliminary Statement	1
Statutory Provision Sustaining Jurisdiction ..	2
Validity of the City Ordinance Drawn in Question	2
Date of Judgment and Order to be Reviewed ..	4
Time and Manner in which Questions Raised Below	4
Opinions of the Courts Below	5
Statement of Facts	5
Questions Presented	13
Reasons Relied on for Allowance of Writ	14
SUPPORTING BRIEF	20-33
Specification of Errors	20
Argument	21
Conclusion	33

CASES CITED

PAGE

Asher v. Texas	
128 U. S. 129	24
Bailey v. Drexel ("Child Labor Tax Case")	
259 U. S. 20	16
Barbier v. Connolly	
113 U. S. 27, 31-32	17
Blue Island v. Kozul	
379 Ill. 511, 41 N. E. 2d 515	16, 25
Bowden v. City of Fort Smith	
U. S. (decided June 8, 1942)	17
Brennan v. Titusville	
153 U. S. 289	24
Caldwell v. North Carolina	
187 U. S. 622, 624-632	24
Cantwell v. Connecticut	
310 U. S. 296	32
Carson v. Maryland	
120 U. S. 502	24
Commonwealth v. Reid	
Pa. S. C. , 20 A. 2d 841	16
Crenshaw v. Arkansas	
227 U. S. 389	24
Davis v. Virginia	
236 U. S. 697	24
Di Santo v. Pennsylvania	
273 U. S. 34, 39	17
Donley v. City of Colorado Springs	
40 F. Supp. 15	30
Dozier v. Alabama	
218 U. S. 124, 126-128	24
Edwards v. California	
314 U. S. 160, 182-186	16
Fetter v. City of Richmond	
142 S. W. 2d 6	33

CASES CITED

	PAGE
Flint v. Stone Tracy Co.	
220 U. S. 107	16
Grosjean v. American Press Co.	
297 U. S. 233	17, 24, 27
Hague v. C. I. O.	
307 U. S. 496	32
Hanover Fire Ins. Co. v. Harding	
272 U. S. 494, 495	17
Jones v. City of Opelika	
62 S. Ct. 1231	14, 15, 17, 23, 24, 25
Lovell v. City of Griffin	
308 U. S. 444	26
McConkey v. City of Fredericksburg	
179 Va. 556, 19 S. E. 2d 682	16, 25
McCray v. United States	
195 U. S. 27	16
McCulloch v. Maryland	
4 Wheat. 316	15
McGoldrick v. Berwind-White Co.	
309 U. S. 33, 55-57	16, 24
Near v. Minnesota	
283 U. S. 697, 707-716	24
Quaker City Cab Co. v. Pennsylvania	
277 U. S. 389	17
Real Silk Hosiery Mills v. Portland	
268 U. S. 325, 335-336	24
Rearick v. Pennsylvania	
203 U. S. 507, 510-513	24
Reynolds v. United States	
98 U. S. 145, 162	28
Robbins v. Shelby County Tax'g Dist.	
120 U. S. 489, 494-496	24
Rogers v. Arkansas	
227 U. S. 401	24

CASES CITED

PAGE

Schneider v. State	
308 U. S. 147	32
Southern Ry. Co. v. Greene	
216 U. S. 400, 418	17
State v. Greaves	
112 Vt. 222, 22A. 2d 497	16, 25
State v. Smith	
127 P. 2d 518	28
Stewart v. Michigan	
232 U. S. 665	24
Stockard v. Morgan	
185 U. S. 27	24
Stoutenburgh v. Hennick	
129 U. S. 141	24
Truax v. Corrigan	
257 U. S. 312, 331-333	17
Veazie Bank v. Fenno	
8 Wall. 533, 548	16
Washington, City of, v. Reed	
70 S. W. 2d 121	33
Watson v. Jones	
80 U. S. 679, 728	30

STATUTES CITED

	PAGE
Jeannette (Pa.) city ordinance No. 60	2-4
United States Code Annotated	
Title 8, sec. 43 ("Civil Rights Act of 1871") .	6, 18
Title 28, par. 347 (a) [Judicial Code, sec. 240	
(a)]	2, 18, 33
United States Constitution	
Amendment I	13, 23-24, 29
Amendment XIV	13, 29, 32, 33
United States Supreme Court, Rules of	
Rule 38, par. 5 (b)	18, 33
Virginia Statute for Religious Freedom	28

MISCELLANEOUS CITATIONS

ALMIGHTY GOD, Word of [The Bible]:

Isaiah 43: 9-12	7
Isaiah 61: 1, 2	7
Matthew 10: 7-12	7
Matthew 24: 14	7
Luke 8: 1, 3	31
Luke 13: 26	31
Acts 5: 42	31
Acts 20: 20	7, 31
1 Corinthians 9: 16	7
1 Peter 2: 9, 21	7, 32

Americana, Encyclopedia, Vol. 6, pp. 660,	
657-659	29
Catholic Encyclopedia, Vol. 14 (1912),	
pp. 250-253	29
Columbia Encyclopedia	29

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Number

■
ROBERT L. DOUGLAS, ALBERT R. GUNDECKER, EARL KALKBRENNER, CARROL CHRISTOPHER, VICTOR SWANSON, NICHOLAS KODA, CHARLES SEDERS, ROBERT LAMBORN, and ROBERT MURDOCK, JR.,

Petitioners

v.

CITY OF JEANNETTE (Pennsylvania), a municipal corporation, and JOHN M. O'CONNELL, individually and as Mayor of City of Jeannette (Pennsylvania),

Respondents

■
**Petition for Writ of Certiorari to the
United States Circuit Court of Appeals
for the Third Circuit**

TO THE SUPREME COURT OF THE UNITED STATES:

The above named petitioners present this their petition for writ of certiorari and show unto the Supreme Court of the United States as follows:

A

Summary Statement of Matters Involved

1. Preliminary Statement.

Although the ordinance involved in this case is the same kind as that considered in *Jones v. City of Opelika*,

62 S. Ct. 1231, Nos. 280, 314 and 966, October Term 1941, this case is not controlled by said decision of this Court because this case comes within the exception announced in the *Jones* case in that the ordinance, by its terms and as applied provides an exorbitant, excessive and burdensome license tax of \$10.00 per day or \$3650.00 per annum, for the exercise of the constitutional right of press and worship in the city from house to house.' The license tax is therefore prohibitive and an unconstitutional burden on freedoms of press and of worship. However, if it be assumed that petitioners have a controversy under the section of the ordinance requiring the payment of \$1.50 daily tax the ordinance nevertheless provides for a burdensome tax upon charitable activity from which no profit or commercial income is received.

2. *Statutory Provision Sustaining Jurisdiction.*

Section 240 (a) of the Judicial Code, 28 U. S. C. A. § 347 (a) sustains jurisdiction of this Court.

3. *Validity of the City Ordinance and the State Statute Drawn in Question.*

The legislation here drawn in question is ordinance number 60 of the City of Jeannette, Pennsylvania (R. 8, 92, 101, 138, 144, 150-n.), which reads as follows:

“City of Jeannette, Pa.
Ordinance No. 60

An Ordinance regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Bor-

² Section one of the ordinance providing for payment of a tax of \$1.50 per day applies only to *canvassing and soliciting* of orders or delivering under orders and does not apply to *peddling or huckstering*. It is not contended that petitioners solicited orders. They were prosecuted for peddling and huckstering without payment of the \$10.00 daily license. See record in *Stewart v. Jeannette*, 300 U. S. 674, 680, No. 722, October Term 1939, certiorari denied.

ough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business, and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be It Ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby ordained and enacted by the authority of the same.

Section I. That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact such business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

For One day \$1.50, for One week seven \$7.00 dollars, for two weeks twelve \$12.00 dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

Section II. That all persons huckstering, peddling, or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said

Borough therefore, the sum of ten \$10.00 Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with the costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this first day of March, A. D. 1898.

D. E. Carle, President of Council.

Attest: Geo. S. Kirk, Secretary.

I, J. Claire Manson, City Clerk, of the City of Jeannette, Pennsylvania, hereby certify that the foregoing is a true and correct copy of Ordinance No. 60 of the Borough of Jeannette (now the City of Jeannette), Pennsylvania.

J. Claire Manson, City Clerk."

[Seal]

4. Date of Judgment and Order to be Reviewed.

The decree or judgment of the United States Circuit Court of Appeals for the Third Circuit reversing the judgment for petitioners by the United States District Court and ordering the action dismissed was duly rendered and entered on August 31, 1942. Time for filing petition for certiorari expires November 30, 1942. This petition is filed within that time.

5. Time and Manner in which Questions Raised Below.

In the complaint for injunction petitioners alleged

that the ordinance as construed and applied was unconstitutional because of abridging their rights of freedom of press and of worship of Almighty God. (R. 9) See particularly paragraph seventeen of the complaint. (R. 11) It was alleged that they were deprived of their rights without due process of law and in violation of the Civil Rights Act of 1871. (R. 3, 10) The answer denied that the ordinance had been unconstitutionally applied and denied that the petitioners had been denied any rights contrary to the Federal Constitution. (R. 20) The trial court considered the federal questions properly presented and held that the ordinance had been applied in such a manner as to violate the Federal Constitution. (R. 137, 142) The United States Circuit Court of Appeals held that the federal questions had been properly raised and presented, both in the trial court and in said appellate court, and held that the ordinance was constitutional. R. 160, 161, 163.

6. *Opinions of the Courts Below.*

The opinion of the United States District Court is reported in 39 F. Supp. 32. The opinion of the District Court in the companion case of *Reid et al. v. Brookville et al.* is reported in 39 F. Supp. 30. The opinion of the United States Circuit Court is unreported at the time of writing of this petition, but appears in the record at pages 149 to 169, inclusive.

7. *Statement of Facts.*²

Petitioners brought this action in the United States District Court for the Western District of Pennsyl-

²The record consists of 212 pages of evidence, most of which relates to income and disbursements made by petitioners in carrying on their work in Jeannette. This Court in the *Jones v. Opelika* case says: "If the size of the fees were to be considered, to reach a conclusion one would desire to know the estimated volume, the margin of profit, the solicitor's commission, and other pertinent facts of income and expense." We have questioned the amount of the tax here and the court's new requirement makes necessary a detailed statement of facts here, which will be longer than is ordinarily made.

vania, under the Civil Rights Act as amended in 1871 [8 U. S. C. A. s. 43] to restrain interference by respondents with petitioners' exercise of their fundamental personal right to distribute literature and simultaneously receive money contributions to aid in printing and distributing more like literature from house to house and upon the streets within the City of Jeannette, alleging that respondents had repeatedly harassed, arrested, prosecuted, unlawfully convicted and unlawfully forced petitioners and other of Jehovah's witnesses to appeal said convictions to the Court of Quarter Sessions of Westmoreland County, thence to the Superior and the Supreme Courts of the Commonwealth; all of which greatly damaged and injured petitioners and other of Jehovah's witnesses and frustrated and practically stopped the lawful activity of Jehovah's witnesses in the exercise of their rights of freedom of speech and of press and freedom to worship ALMIGHTY GOD, causing petitioners to suffer irreparable injury and damage in future unless enforcement of said ordinance was enjoined. R. 3-14.

CHARLES R. HESSLER testified that he is a resident of Coraopolis, Pa., and a native citizen of the Commonwealth; that his occupation was an ordained minister of Jehovah God, representing the Watch Tower Bible & Tract Society in the capacity of a zone servant; that the Watch Tower Bible & Tract Society is a corporation created under the laws of Pennsylvania for the purpose of disseminating Bible truths in various languages by means of tracts, books, booklets and other lawful means. (R. 23) That Jehovah's witnesses are Christian men and women, ordained ministers of the gospel, wholly and entirely devoted to the service of Almighty God and have covenanted with Jehovah to serve Him and to do His will and to follow in the footsteps of Christ Jesus by preaching from house to house;

that the Watch Tower Bible & Tract Society is used by Jehovah's witnesses as publishers to assist them in disseminating Bible truths and to preach the gospel. Plaintiffs-petitioners and all other Jehovah's witnesses possess credentials showing that they are duly ordained to preach the gospel and to represent the Watch Tower Bible & Tract Society. See Petitioners' Exhibit No. 38. (R. 24) That Jehovah's witnesses throughout the earth are organized into groups where they as groups and as individuals co-operate with one another for the purpose of preaching the gospel and taking to the people information concerning God's kingdom in an efficient and orderly manner. That Jehovah's witnesses visit the people in different communities at regular intervals to call upon them with the message of the Kingdom, using phonographs to present the books and booklets and to encourage and stimulate home Bible study. That each one of Jehovah's witnesses is an ordained minister of Almighty God. That Jesus Christ taught publicly on the streets and from house to house, and that His apostles also taught publicly and preached from house to house, and that all true followers of Jesus Christ in the present day are commissioned, anointed and ordained as ministers of Jehovah God for the sole purpose of preaching the gospel from house to house and publicly. Isaiah 61: 1, 2; Isaiah 43: 9-12; Matthew 10: 7-12; Matthew 24: 14; Acts 20: 20; 1 Peter 2: 21; 1 Corinthians 9: 16. That in order to do the work quickly and efficiently books and booklets in various languages are employed instead of conversation, in order to save time and enable people at their leisure to study in their homes and learn for themselves. That the work of Jehovah's witnesses has been carried on for many years in Jeanette; that in March, 1939, while Jehovah's witnesses were distributing literature from house to house and receiving money contributions they were arrested and

warned to discontinue the work or otherwise they would be prosecuted under Ordinance No. 60.

Thereafter, on April 2, 1939, plaintiffs delivered a letter to the police and mayor of Jeannette, explaining the nature of their work and showing why the ordinance did not apply to them, which said letter appears in the record. (R. 28-9) That on the date of delivery of said letter several of Jehovah's witnesses were again arrested and this time complaint was filed in the Mayor's Court of the City of Jeannette, charging them with violation of said ordinance for failure to purchase a peddler's license. That on such date Hessler advised defendant O'Connell that Jehovah's witnesses had no objection to the ordinance as a commercial ordinance, but objected to its being misapplied to their work of preaching the gospel.

That on April 2, 1939, twenty-one of Jehovah's witnesses were arrested, and 18 were tried and convicted and forced to appeal to the Court of Quarter Sessions. That on a subsequent appeal to the Pennsylvania Superior Court from the Court of Quarter Sessions petitioners' failure to have attached to original appeal papers a certified copy of the mayor's transcript resulted in dismissal of that appeal [137 Pa. S. C. 445; 9 A. 2d 179], and from there the case was taken to the Supreme Court of the Commonwealth [137 Pa. S. C. XXXIII] and then to the Supreme Court of the United States, where certiorari was denied [309 U. S. 674, 699], because decided on non-federal ground.

That since April, 1939, to wit, in February, 1940, there were a number of prosecutions and convictions of Jehovah's witnesses under said ordinance and appeals to the Court of Quarter Sessions, where those cases are now pending. That there have been more than thirty (30) arrests since the original twenty-one arrests.

Petitioners' Exhibits 3 to 10 inclusive were books

published by the Watch Tower Bible & Tract Society and distributed by Jehovah's witnesses in Jeannette.

Petitioners' Exhibits 11 to 36 inclusive were booklets and pamphlets distributed by Jehovah's witnesses in Jeannette.

The witness explained the manner in which the work was carried on in Jeannette, to wit, that Jehovah's witnesses visited the home, rang the bell or knocked, and when a person came to the door the caller said, 'I represent the Watch Tower Bible & Tract Society' or 'I am one of Jehovah's witnesses, and we have very important information for you in the form of a phonograph record which I will play, and it will take only a few minutes for you to hear it.' Whereupon the caller demonstrated with a portable phonograph and played Plaintiffs' Exhibit 37. At conclusion of playing of phonograph record the householder was asked whether he liked the record, and then a card was presented for him to read, explaining how he may obtain "The Watchtower", published twice a month, and if he did not care to take "The Watchtower" then attention was called to the fact that one of the bound volumes could be secured on a contribution of twenty-five cents. That on the occasion of the first arrests Jehovah's witnesses were distributing the two booklets "Face the Facts" and "Fascism or Freedom", taking a contribution of five cents from persons receiving the two booklets, and to any who did not care to contribute and desired the booklets copies were given free. That he was in Jeannette at the time of the arrests in April, 1939.

That the reason Jehovah's witnesses did not apply for a permit or purchase a license under the ordinance was because they were *not* peddlers but ministers of Jehovah God doing this work in obedience to His explicit command, and for them to ask for a permit to do what Jehovah has commanded would be an insult to the

Creator, as His law is supreme and above all human law. That repeatedly and on several occasions after April 2, 1939, throughout the year 1939 and throughout the year 1940, up to the time that this action was filed, the witness had many conversations with the defendant O'Connell, imploring with him not to interfere with Jehovah's witnesses and to discontinue arresting them under the ordinance; but that the mayor always insisted that the law was valid and that they would continue to enforce it as long as Jehovah's witnesses distributed literature from house to house in Jeannette and accepted money contributions.

That the repeated arrests and prosecutions have curtailed the work of Jehovah's witnesses, intimidated people of good-will who reside in Jeannette, causing such persons to be afraid to accept any literature offered by Jehovah's witnesses, and caused the company of Jehovah's witnesses to diminish and move away from the community and avoid working in the community.

That Hessler had personal charge of the defense of all cases, and that the expense of defense and appeal of the various cases has amounted to over \$1,700.00 (R. 67-69), in addition to hundreds of dollars of expense incurred by individuals for travel costs and inconveniences and damage through loss of jobs and reputation.

The evidence shows that the full-time servants such as Hessler received a \$25.00 maximum allowance for incidental personal and travel expenses, but no salary or commission is paid. (R. 42-45) The Society receives 5c each on books sent to the full-time worker. If a contribution of 25c is received there is a difference of 20c which the full-time worker uses toward expenses. (R. 44) They do not always receive any contributions when the books are placed, as more often the books are left free of charge. (R. 44) They give more books and booklets away free than the number for which contributions

are received. (R. 44) The amount of contributions runs for each between \$2 and \$4 per month (R. 45) and the profit or differential on each book placed would be much less than that because of sending in to the Society the amount charged for each book received. (R. 44-45) All remuneration from all sources for the full-time worker does not exceed \$40 per month, including the \$25.00 monthly allowance. (R. 46) The expenses for operation each month run between \$60 and \$85 per month, which includes cost of books given away and those for which contributions are received. (R. 48) The difference between income and outgo is taken from reserve fund which the witness, Hessler, had before going into the work. (R. 49) In the case of the part-time worker who usually has secular employment during the week to support himself the literature is provided by the Society at less than cost price of publication or 20c each book. The books are received by the part-time publisher from his local company or group congregation that receives them directly from the Society. If the part-time publisher receives a contribution of 25c for a book he retains a difference of 5c which is applied toward his expense of bringing literature to the people and toward the cost of books which he distributes freely to the people. (R. 49-50, 75) Because many books are given away by each part-time publisher or worker and because of the expense in bringing the literature to the people no profit is made by the part-time worker—he also operates at a loss. (R. 49-51; 106-108) A *company* is an organized group or gathering of Jehovah's witnesses numbering from two to two hundred or more. (R. 54) The companies pay the Watchtower Society for each book received the sum of 20c. R. 49-51, 75.

Because of the great persecution and difficulties experienced by petitioners around Pittsburgh in western Pennsylvania they had organized a non-profit

charitable corporation for purpose of operating a Kingdom School to provide suitable education for their children who had been expelled from public schools because of their refusal to salute the American flag. This organization was known as Kingdom Service Association and was used also to finance some of the major legal cases and difficulties in western Pennsylvania, including the Jeannette controversy. (R. 69) The association kept records. (R. 69-71, 78-81) Its income is entirely from voluntary contributions of Jehovah's witnesses. It did not make a profit off of the preaching activity and received no commission or income whatsoever from any books placed by Jehovah's witnesses. R. 69, 75, 79-83, 106-114, 125-129, 133.

The books of one of the companies or local organizations were produced in court. It contained a record of the books placed with each member of the local congregation by the local office. The figures for one month demonstrate the account. The book account showed \$398.14 total for the month including a carry over of \$142.42 from the month before with \$237.91 disbursements for that month. Another month shows a total at the end of month of \$484.81 including a \$162.73 carry-over from the previous month. (R. 116-121) The local company was required to pay for telephone rental and for rental of a hall in the amount of \$100 per month not shown in the above account. (R. 120) No individual receives a profit or salary from the work. The company pays the Society 20c each for books received (R. 121), and charges each member of the company 22c each; the difference between which, 2c, was used for partial payment of the damage, shipping and deterioration of the books, etc. (R. 121, 123-125) The company owes the Watch Tower Bible & Tract Society a balance of \$1300 for books. (R. 125-128) The amount of money received each month for books does not take care of

the operating costs, rent, telephone, etc., which deficit is taken care of by voluntary contributions of members of the company. (R. 126) The inventory taken showed \$520 worth of books on hand and a large account receivable from various members for books placed to Jehovah's witnesses in the company. R. 128-129.

That the reason Jehovah's witnesses did not apply for a license or pay the peddler's tax required under the ordinance was because they were not peddlers but ministers of Jehovah God doing this work in obedience to His explicit command, and for them to ask for a permit to do what Jehovah has commanded would be an insult to the Creator, as His law is supreme and above all human law. R. 39.

B

Questions Presented

By reason of the foregoing, there were seasonably presented to the courts below and there now are presented to this Court for review substantial federal questions as follows:

(1) Is the ordinance in question unconstitutional on its face and as construed and applied because imposing a tax excessive, exorbitant and prohibitive in amount of \$10.00 daily or \$3,650 annually in one section and in another section for a daily tax of \$1.50, or \$547.50 annually, upon the constitutionally secured rights of freedom of press and of worship?

(2) Does the ordinance as construed and applied unduly abridge petitioners' rights of freedoms of speech, of press and of worship of Almighty God contrary to the First and Fourteenth Amendments to the United States Constitution?

(3) Does the ordinance as construed and applied violate the *equal protection* and *due process* clauses of the Fourteenth Amendment to the United States Con-

stitution by reason of discrimination against petitioners in favor of other persons in the same class?

(4) Did the United States District Court have jurisdiction of the cause?

C

Reasons Relied on for Allowance of Writ

The questions presented are of national importance and seriously affect the fundamental personal and civil rights of every person within the United States. The Circuit Court of Appeals has rendered a decision on an important federal question in a way which is in conflict with applicable decisions of this Court involving this kind of an ordinance under the Constitution and has radically and so far departed from the accepted and usual course of judicial proceedings in federal courts as to call for an exercise of this Court's power of supervision to halt the same.

The Circuit Court of Appeals has decided an important question of federal constitutional law which has not been heretofore decided; that is to say, the question as to just when the size of the tax becomes a substantial clog upon activities of the sort here involved. (*Jones v. Opelika*, 62 S. Ct. 1231) Here it is "distinctly claimed" that the taxes are excessive, exorbitant and burdensome upon the constitutional rights exercised by petitioners. The record is full of facts showing the income and expense, the estimated volume, the margin of profit, etc., which this Court says "one would desire to know". The entire record shows no profit, that the contributions do not exceed the expense, that the work is charitable and done at a loss to petitioners and for the benefit of the public and those receiving the literature. The record therefore shows a "substantial clog" and brings the work within the exception announced in the *Jones* case. The record and petition here expressly

raise this important question which this Court did not see fit to pass upon or consider in the *Jones* case because there not "distinctly claimed" to be excessive in amount. This case will give this Court an opportunity to clarify just what it meant by "substantial clog" in the *Jones* case. It is further submitted that, in view of the record, the Circuit Court of Appeals has departed from the spirit of the exception announced in the *Jones* case. Of course this problem need not be considered if the Court grants the motion for rehearing in the *Jones* case and holds unconstitutional the ordinances there requiring a license tax in any amount when applied to this sort of activity. However, if the court does not grant the motion in the *Jones* case and lets the doctrine in the *Jones* case stand as the law, such decision would not require the denial of *certiorari* here because the question here presented is entirely different from that presented in the *Jones* case in that here is presented the question of excessive, exorbitant and burdensome tax that is a "substantial clog". We still insist that the majority opinion in the *Jones* case is *error* and that the minority opinions should be adopted as the law.

The effect of the holding in the *Jones* case is to push "inalienable rights" of freedom of speech, press and worship into the path of the devastating taxation machinery of the state and federal governments, because of the fact that if taxation is properly applicable to an activity the famous proverb of liberal-minded lawyers of the early stages of democracy applies, to wit, "the power to tax is the power to destroy." (*McCulloch v. Maryland*, 4 Wheat. 316) In this connection the Court's attention is called to the fact that it has universally been the rule of this Court for more than a hundred years that if a given activity is held to be taxable to any extent whatsoever, it is utterly impossible for the courts to inquire whether or not a tax is excessive or

burdensome, even to the extent of becoming prohibitory and destructive. We refer to the cases of *Veazie Bank v. Fenno*, 8 Wall. 533, 548; *McCray v. United States*, 195 U. S. 27; *Flint v. Stone Tracy Co.*, 220 U. S. 107; *Bailey v. Drexel* ("Child Labor Tax Case"), 259 U. S. 20. Therefore the Court's holding to the effect that the tax should be attacked as excessive is without merit.

The holding of the Circuit Court of Appeals conflicts with the cases cited in *McGoldrick v. Berwind-White Co.*, 309 U. S. 33, 55-57, involving the same sort of ordinance. That holding also conflicts with the case of *Commonwealth v. Reid*, . . . Pa. S. C. . . , 20 A. 2d 841, involving activity of Jehovah's witnesses under an ordinance very similar to this which provided for the payment of a license tax. See also *McConkey v. Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682, *State v. Greaves*, 112 Vt. 222, 22 A. 2d 497, *Blue Island v. Kozul*, 379 Ill. 511, 41 N. E. 2d 515.

The court below holds that the ordinance in question was constitutional when applied to persons receiving money contributions for literature distributed. This holding clearly discriminates in favor of a wealthy and well-to-do class of persons who are able to give away literature without charge and thus enjoy their constitutional rights while it arbitrarily deprives persons too poor to carry on their work without contributions of their rights of freedom of press, speech and worship contrary to the *equal protection* and *due process* clauses of the Fourteenth Amendment to the United States Constitution. It thus arbitrarily and with discrimination divides the people into two classes: one class wealthy enough to exercise constitutional rights; and the other class too poor to purchase a *freedom license* or give away their broadsides free of charge. *Edwards v. California*, 314 U. S. 160, 182-186. JACKSON and DOUGLAS, JJ. This point of discrimination raised here

also distinguishes the case from the holding in *Jones v. Opelika*, supra. See *Barbier v. Connolly*, 113 U. S. 27, 31-32; *Truax v. Corrigan*, 257 U. S. 312, 331-333. In *Di Santo v. Pennsylvania*, 273 U. S. 34, 39, this Court holds that this sort of an ordinance is "likely to be used as an instrument of discrimination".

See also the cases of *Hanover Fire Ins. Co. v. Harding*, 272 U. S. 494, 495, and *Southern Ry. Co. v. Greene*, 216 U. S. 400, 418, where it is said: "To tax the foreign corporations for carrying on business by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws." Also this Court holds that to levy a tax on corporations operating a taxicab business but not on individuals operating such a business results in a discrimination not justified by any difference in the source of the receipts or in the situation or character of the property employed, and is violative of the equal protection clause. *Quaker City Cab Co. v. Pennsylvania*, 277 U. S. 389.

The holding of the courts below conflicts directly with the prior decision of this Court in the case of *Grosjean v. American Press Co.*, 297 U. S. 233.

The reluctance with which the Circuit Court of Appeals followed this court in the *Jones* case should be considered a good reason for granting the petition for writ of certiorari here. The Circuit Court of Appeals said: "In view of the fundamental importance of the question involved we think it not improper to say that Judge Biggs and the writer of this opinion in harmony with the views expressed by Chief Justice Stone and Justice Murphy and concurred in by Justices Black and Douglas in the case of *Bowden v. City of Fort Smith*, . . . U. S. . . (decided June 8, 1942), would, if free to do so, vote to hold that the district court was right in concluding that the ordinance of the City of

Jeannette is unconstitutional as applied to the activities of the plaintiffs and their associates."

In brief, the writ here sought should be granted because the ordinance provides for an excessive tax upon constitutional privileges so as to constitute a "substantial clog", if not an outright prohibition of the exercise of the right in providing for payment of excessive sums or else give literature away free without receiving any aid. Regardless of the amount of the tax the ordinance imposes a substantial burden upon the right of press and worship of Jehovah God through stifling distribution and circulation of literature.

As our further reasons why this petition for writ of certiorari should be granted we submit that there is presented an important question of jurisdiction of the United States District Court and a question of construction of the Civil Rights Act of 1871. The judges of the Circuit Court of Appeals did not agree on this. Almost the entire part of Judge Maris' opinion is devoted to a discussion of the question holding in favor of jurisdiction of the court. Judge Jones files a dissenting opinion vigorously assailing the jurisdiction of the trial court.

It is submitted that this case is one calling for the exercise by the Court of its supervisory powers under Section 240 (a) of the Judicial Code [28 U. S. C. A. paragraph 347 (a)] and Rule 38, paragraph 5 (b) of Rules of this Court.

WHEREFORE your petitioners pray that this Court issue a writ of certiorari to the Circuit Court of Appeals for the Third Circuit, directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of the Circuit Court of Appeals re-

versing the trial court be here set aside and the judgment of the trial court affirmed; and that your petitioners be granted such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

ROBERT L. DOUGLAS
ALBERT R. GUNDECKER
EARL KALKBRENNER
CARROL CHRISTOPHER
VICTOR SWANSON
NICHOLAS KODA
CHARLES SEDERS
ROBERT LAMBORN
ROBERT MURDOCK, Jr.

Petitioners.

By HAYDEN C. COVINGTON
Their Counsel of Record.

SUPPORTING BRIEF

Specification of Errors

The petitioners assign the following errors in the record and proceedings of said cause:

The Circuit Court of Appeals committed fundamental error in affirming the judgment of the trial court because

(1) The ordinance in question provides for a prohibitive, exorbitant and excessive license tax of \$10 per day for "peddling" literature and a tax of \$1.50 per day for canvassing for orders of literature, amounting to a "substantial clog" upon petitioners' activities.

(2) The ordinance in question as construed and applied is void because it abridges petitioners' rights of freedom of speech, press and worship of Almighty God contrary to the First and Fourteenth Amendments to the United States Constitution.

(3) The ordinance in question as construed and applied denies petitioners their rights because of discrimination against them in favor of other persons in the same class contrary to the "equal protection" and "due process" clauses of the Fourteenth Amendment to the United States Constitution.

For each of the above reasons the judgment of the Circuit Court of Appeals for the Third Circuit should be reversed and the judgment of the District Court affirmed.

ARGUMENT

The license tax here imposed provides for a burdensome and excessive amount upon the exercise of constitutionally secured inherent rights of freedom of speech, press and worship, heretofore held inalienable by this court. The evidence shows that of the petitioners the one whose full time is devoted to the activity carries on the activity at a financial loss to himself. The monthly deficit must be made up from a source other than receipts from placement of literature with the public. More than half the literature is given away free to the poor and others who were unable to contribute. Often contributions are received of less than the cost of manufacturing and distributing the literature, and the distributor very rarely receives a contribution for the full amount fixed by Jehovah's witnesses. The part-time worker likewise gives away most of the literature to the people and operates at a loss. The record here shows conclusively that the work is benevolent and charitable and is not commercial. If it were commercial work the literature would never be given away nor would the receiver be allowed to contribute any sum he desired when he receives the literature. The receiver would be required to pay the full price else not receive the literature, if the work were commercial.

The contributions thus received by Jehovah's witnesses are identical to the "free-will" offerings received by the clergyman when *his* contribution plate is passed. No reasonable person could contend that the hearer "bought" or "purchased" a sermon when thus contributing to the preacher; nor can it be contended that anyone "bought" the *printed* sermons distributed by the petitioners. They did not *sell* as that term is understood in commercial transactions or *circles*. A commercial business could not last long if operated on the

principles or by the methods employed by Jehovah's witnesses. The reason Jehovah's witnesses carry on as they do in spite of the loss to them financially is because their entire life is devoted to Jehovah God. Each has pledged *his all* to see that the people receive God's Word concerning the complete establishment of God's kingdom in the near future. Each considers it a privilege to devote his time and money in bringing the message to the people, even if it costs him his life or liberty; therefore, financial loss is a small thing compared to the other hardships they are willing to endure for the name of the Lord Jesus Christ. Jehovah's witnesses themselves keep the deficit suffered in their operations made up by voluntary contributions *themselves* and do not depend upon someone on the *outside* to bear their burdens. Therefore their work is entirely charitable and it cannot be honestly or fairly contended to be commercial. The record does not support a conclusion that the transactions are commercial or profitable.

The unfairness of the fixed license fee is demonstrated in this: It must be paid by one whose entire activity is charitable or who distributes the literature freely and without charge. The taking of occasional contributions is considered by the court below as the basis for requiring each petitioner to obtain the license and pay the tax. This really permits a tax on giving away literature free of charge, and, furthermore, encourages unscrupulous police officers to swear falsely that the one arrested *offered* literature *for sale*, so as to obtain a wrongful conviction.

When it is considered that the total income of one whose full time is devoted to this work from the distribution of the literature is only about \$4 per month, the imposition of a monthly tax of \$300 provided by the ordinance is absolutely prohibitive. Even the imposition of the license tax of \$1.50 per day would be grossly ex-

cessive when applied to the charitable activity of giving away free of charge most of the literature and receiving an occasional contribution. A fee or tax imposed in any amount is excessive in view of the fact that each of the petitioners carries on his work at a loss. The evidence shows a loss to each one of Jehovah's witnesses. To apply the tax is equal to taxing free distribution of literature. A license tax in amount unduly abridges petitioners' fundamental personal rights and is a "substantial clog" upon their activity. To permit the imposition of such a license tax is greatly to burden, if not destroy their work of going about the cities doing good unto all whom they meet as did Christ Jesus and His apostles.

To require one who distributes literature in this manner to refrain from accepting occasional money contributions toward his work of distributing literature would mean that the freedom of press and worship according to the dictates of one's conscience are the prerogative only of those able to give away literature free of charge. This sort of holding makes the constitutional fundamental personal rights the privilege only of the ultrarich and well-to-do who can well afford the more exclusive means of preaching such as the public press and the radio.

The above record here presents a situation where the tax is clearly a "substantial clog" on petitioners' activity. The record, evidence and account books show conclusively that there is no profit whatsoever that inures to the benefit of anyone. There is no paid preacher in any one congregation nor at headquarters. The tax, if imposed in any amount, is an excessive and prohibitory burden upon their constitutional rights as exercised. (*Jones case, supra.*)

The word "abridging" in the First Amendment needs discussion. The word "abridge" means to short-

en, to curtail or to reduce, and comes from the same root as the word "abbreviate". The word does not mean to destroy, forbid, prohibit or prevent. The use of the word "abridge" in the First Amendment may be compared to the word "burden". In order to show the ordinance invalid, it is not necessary to find that it denies, destroys or prohibits freedom of the press; but it is sufficient if it is found that the ordinance burdens this right. Admittedly the ordinance does and therefore is unconstitutional.

The license tax is an arbitrary tax upon the exercise of the constitutional right and more burdensome than the ancient *Stamp Tax*.⁴ The license tax provides for a blanket amount to be paid as a condition precedent to the exercise of the right and does not depend on the income or profit made by the individual or the amount of business carried on in the city. It does not depend for its size or amount on the number of pieces of literature distributed for which money contributions are received. No provision is made for a reduction on the basis of the number given away free of charge. It is therefore the worst kind of burden or abridgment. It is condemned by previous decisions of this and other courts when applied to exercise of rights constitutionally secured.⁵

⁴ For historical discussion of these oppressive taxes see *Grosjean v. American Press Co.*, 297 U. S. 233; *Near v. Minnesota*, 283 U. S. 697, 707, 716; the opinions of Chief Justice Stone and Justice Murphy in the case of *Jones v. Opelika*, supra; pages 20-25 of petitioners' motion for rehearing in the *Jones* case; and page 7 of *American Newspapers Publishers Association* amicus curiae brief filed in the *Jones* case.

⁵ *McGoldrick v. Berwind-White Co.*, 300 U. S. 33, 55-57; *Robbins v. Shelby County Taring Dist.*, 120 U. S. 489, 494-496; *Caldwell v. North Carolina*, 187 U. S. 622, 624-632; *Rearick v. Pennsylvania*, 203 U. S. 507, 510-513; *Dozier v. Alabama*, 218 U. S. 124, 126-128; *Real Silk Hosiery Mills v. Portland*, 268 U. S. 325, 335-336; *Carson v. Maryland*, 120 U. S. 502; *Asher v. Texas*, 128 U. S. 129; *Stoutenburgh v. Hennick*, 129 U. S. 141; *Brennan v. Titusville*, 153 U. S. 289; *Stockard v. Morgan*, 185 U. S. 27; *Crenshaw v. Arkansas*, 227 U. S. 389; *Rogers v. Arkansas*, 227 U. S. 401; *Stewart v. Michigan*, 232 U. S. 665; *Davis v. Virginia*, 236 U. S. 697.

The dissenting opinions of Chief Justice Stone and Justice Murphy in the *Jones v. Opelika* case are, we submit, the law of the land and this should be an appropriate occasion for this Court to correct the mistake made by the majority in the said case. It is never too late to be right and it is now the time to change over with the dissenting Justices in favor of liberty before the liberties of the people become so entangled with many varieties of precedents that will spring from the majority opinion against the liberty of the people that it will be impossible to recover the former position of the Court.⁶ Respectable authority supports the dissenting Justices. See the cases of *Blue Island v. Kozul*, 371 Ill. 511, 41 N. E. 2d 515; *McConkey v. City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682; *State v. Greaves*, 112 Vt. 222, 22 A. 2d 497; holding the identical ordinance here questioned to be unconstitutional.

It cannot be fairly contended that the distributor can pass on to the *consumer* the additional burden imposed by reason of the license tax. The *consumer* is entitled to be free of the same burden as is the distributor. Freedom of press and of worship protects the conveyer of ideas as well as the receiver of ideas. Here in this case Jehovah's witnesses, the conveyors of ideas, are discharging their trust or obligation imposed as trustees for the receivers of the literature to urge in behalf of the *consumer* that the license tax is a burden on the receiver or consumer as well as on the

⁶The devastating consequences of the *Jones* case majority opinion are demonstrated in this case. Although the judges of the court held that they were of the opinion that the dissenting opinions correctly announced the law they were forced to follow the error of this Court in the *Jones* case. (R. 161; and see this brief page 17, supra.) So shocked were the members of the court below as a result of such compulsory violation of their view of the law that they entirely overlooked that the facts in this case fell within the exception of the *Jones* case, to wit, "excessive" taxes so as to amount to a "substantial clog". "Substantial clog" is now undefined by the court and needs clarification.

distributor. The entire avenue should be kept open for both the distributor as well as the receiver. In making this claim Jehovah's witnesses are not claiming a special privilege for themselves, but they are discharging to this court the responsibility which they owe as citizens of these United States and to this Court by clearly showing wherein this sort of license tax injures not only petitioners but also every citizen in the United States who might desire to pamphleteer on any matter: political, social or religious. Jehovah's witnesses do not claim that they are immune from all kinds of taxes. They pay income taxes; advalorem realty taxes on their homes; license taxes on their automobiles; sales taxes on their food, etc. However, the charitable organization which they use to preach the gospel is, like all religious organizations, exempt by statute from the payment of state and federal taxes of all kinds. None of the above taxes, as distinguished from the license taxes in the present case, have a prohibitory or censorial quality or operate as conditions precedent to the publication or circulation of literature explaining the Bible. The license tax, however, does that very prohibitive evil thing.

The ordinance in the case at bar cannot be distinguished from the ordinance knocked down in *Lovell v. Griffin*, 303 U. S. 444. There the license was condemned as an abridgment of freedom of the press even though the ordinance provided for the issuance of the license without the payment of any sum to the city of Griffin. It must be remembered that the ordinance was condemned in the *Lovell* case because of the requirement of a license and not the discretionary right to refuse to issue it. The case was not disposed of on such a narrow ground. We submit that if the requirement of a license without charge is invalid, and this Court admits it is, then the adding of a fee or tax thereto does not save it;

but such tax makes doubly objectionable the ordinance here questioned. It should be remembered that *license* was the favorite means of regulating the press before the Stamp Taxes were devised prior to the American Revolution. The license tax incorporates both those suppressive evils.

The case of *Grosjean v. American Press Co.*, 297 U.S. 233, is controlling here. There Louisiana imposed a two percent tax on the gross receipts of any newspaper, magazine, etc., engaged in selling advertisement in the state and having a circulation of more than 20,000 per week. It is to be remembered that that case was not decided on grounds of unfair discrimination but solely on the grounds that the tax was a direct burden upon distribution or circulation and thereby was an unconstitutional *abridging* of the freedom of the press. The same conclusion should be reached here.

There is a much more important ground involved, i.e., the ordinance as construed and applied abridges the right of freedom of worship of Almighty God. This sacred and unalienable right of freedom of worship has been denied and prohibited petitioners. The undisputed evidence shows that this is the petitioners' way of worship of Almighty God. This can be denied by no one. The contributions were admittedly free-will offerings to further the good work of spreading the gospel of God's kingdom. The contributions cannot be considered as commercial income. These activities cannot be viewed by this Court as "commercial" nor can the methods used be likened to those employed by commercial businesses. The evidence shows that there is a loss to petitioners to carry on this work, and that it is charitable.

The construction of the ordinance so as to cover the activity of petitioners is the same as wording the ordinance to read "all persons receiving money toward preaching the gospel while so engaging in acts of wor-

ship of Almighty God or in religion, must procure a license from the city and pay therefor the annual or daily fee" of the stated sum. No person would suggest that such a law is constitutional. All will admit that such a law is unconstitutional. Yet if this Court sustains the law attempted to be applied here, it will in effect say and do that very evil thing.

The activity of Jehovah's witnesses in distributing their literature is admittedly a "religious rite", i. e., their way of preaching the gospel. The court cannot question this because the fundamental law conclusively precludes this Court from finding otherwise. See the Virginia Statute for Religious Freedom quoted by this Court with approval in *Reynolds v. United States*, 98 U. S. 145, 162. There it is held that to permit the court to intrude itself into the field of "religious" opinion would make uncertain religious liberty, which would depend entirely on the religious "complexion" of the members of the court. If the Court had the same "complexion" as the practitioner before it then liberty is granted; if not, it is denied. See the Kansas Supreme Court's words on this in *State v. Smith*, 127 P. 2d 518; to wit, "We are not impressed with the suggestion that the religious beliefs of appellants and their children are unreasonable. Perhaps the tenets of many religious sects or denominations would be called reasonable or unreasonable, depending upon who is speaking."

To permit licensing of a preacher as a condition precedent to receiving contributions to sustain him to preach further is identical with licensing of preaching itself. It chokes off the sustenance thereof. The hair-splitting dissection of the protected right so as to sustain the license tax finds no support in law, reason or fact.

To permit or to encourage application of this type of ordinance to the activity of preaching the gospel by

Jehovah's witnesses is to regulate "church" and ultimately permit politicians and others to establish through some such regulation a *state religion*, i. e., by requiring the license, for those not desired by the state would be suppressed and only the one or those religions pleasing to the particular faction in power at the time could exist or operate. Thus the people of America would be pushed back into the miserable condition of intolerance, lethargy and indolence of the Dark Ages from which founders of this "land of liberty" fled during the reign of King James. All tendencies to accomplish a joinder of "church and state", either directly or indirectly, should be nipped in the bud. The sedulous avoidance by America of any move toward joinder of "church and state" is discussed in *The Encyclopedia Americana*, Vol. 6, pp. 660, 657-659; and in the *Columbia Encyclopedia* (Columbia University Press). See *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

The position asked for by respondents in this matter clearly discriminates in favor of recognized religious clergymen, against the "poor and weak" servants of Jehovah God, preaching in the same manner as did Jesus. This discrimination cannot be screened for long. The fair judicial mind also rebels against taxation to prohibit and impair the spread of the Gospel even though it is controversial and runs counter to established notions of some persons in the community. It should be remembered that Christ and His apostles were despised, hated and persecuted and charged with "turning the world upside down and refusing to give tribute to Caesar". The charge was falsely made by the clergy of the day, as history abundantly proves. Will this Court permit Jesus' footstep followers in the present day, Jehovah's witnesses, to be similarly denied

their rights because of the false charges made against them. We submit the answer is "No".

To permit application of the ordinance would directly violate the First and Fourteenth Amendments to the United States Constitution. To require Jehovah's witnesses to obtain the license and pay a tax when all religious clergymen are not required to have a license for preaching in a manner pleasing to their conscience, is plain, bald discrimination. In spite of wide unpopularity caused by pressure groups within the nation, Jehovah's witnesses are entitled to the same protection under the law as the religious clergy of recognized denominational sects.

There is only one circumstance which warrants interference with one's religious activity or exercise and that is expressed in *Watson v. Jones*, 80 U. S. 679, 728:

"In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

No such condition exists here. It is not contended that the ordinance is drawn or aimed or applied to curtail any such improper conduct. We submit that no exception exists here that permits interference in any way by any means of the petitioners' rights to worship Almighty God. See *Donley v. Colorado Springs*, 40 F. Supp. 15.

The taking of money contributions cannot be segregated from the distribution of literature so as to tax the contribution without in effect strangling or cutting off

the circulation and distribution itself. One doing good, such as petitioners, by constantly distributing "without price" literature on subjects of great importance which is for the benefit of the public is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must go bankrupt by forced free distribution or payment of excessive taxes as a condition precedent to exercise his "inalienable rights" protected by the Constitution. Such a reprehensible contention if permitted to stand means the "death toll" to all "four" freedoms for which America is now fighting.

The taking of money contributions, while incidental to their primary aim of encouraging the recipient to study the printed message is a necessary integral part of the entire act of worship which is protected in the same manner as the transaction of the recognized clergy in their solicitation of money contributions from the pulpit.

The only difference between methods of the recognized religious clergy and the way Jehovah's witnesses preach is that the clergy require the people to come to their buildings and edifices to hear a sermon after making a contribution, whereas Jehovah's witnesses carry the message, printed sermons, to the people. Thus they preach as did the Lord Jesus Christ and His apostles (Luke 13: 26; Acts 5: 42; 20: 20), receiving free-will offerings as they go preaching (Luke 8: 1, 3) to honest people of righteousness who do not attend any church. In the United States today there are millions of persons who are honest and of good-will toward Almighty God who do not belong to any church or who, because of various circumstances, are unable to attend the meetings held weekly in the edifices of the

religious clergy. Those millions constitute the great majority of the American people. This great multitude would receive no spiritual food whatever unless it is brought to such persons by Jehovah's witnesses at their doors; or supplied to them on the streets, which spiritual food they can take to their homes and assimilate at a time convenient to them. This situation presents not only a great public necessity but the opportunity to such persons to receive God's revealed word in permanent form of Watchtower publications to study quietly in their homes. The Court cannot properly confuse petitioners' activity, therefore, with commercial activity.

It cannot be argued that because the clergy confine their preaching to oral sermons in church edifices, a proper place, that on the streets or publicly is improper place. To hold thus would be to rule out the way of Christ and His apostles, whom all true ministers are counseled to follow. (1 Peter 2: 9, 21) Also this Court has held that the streets as well as from house to house are the most convenient places and have been used for centuries as the natural and proper places to contact the people in the exercise of fundamental liberties. *Schneider v. State*, 308 U. S. 147; *Hague v. C. I. O.*, 307 U. S. 496; *Cantwell v. Connecticut*, 310 U. S. 296.

It is a bald discrimination in the ordinance in that one who is financially unable to give away literature free of charge is not required to procure a license and pay the tax while he who accepts money contributions to aid toward bearing part of the expense of carrying on his charitable work is compelled to submit to the unlawful burden imposed by the ordinance. This permits the people to be divided into two classes. One class will be too poor to give literature away free of charge and if such receive aid to keep the good work alive, they will be prosecuted for failure to get a license. The

other class, who are wealthy, can give away pamphlets free of charge and will have the prerogative of the exclusive right of free press and free worship of Almighty God and not be subject to the license tax law here involved. In this the ordinance permits of discrimination of the worst kind. Thus the ordinance violates the Fourteenth Amendment to the United States Constitution.

For a further discussion of why the ordinance is void because of discrimination we here refer to pages 21 to 25, *supra*; and cases there cited.

In *Fetter v. City of Richmond*, 142 S. W. 2d 6, decided by the Missouri Supreme Court it was held that a license tax of \$5 per day, \$50 per month or \$100 per year on "peddlers" was prohibitory and hence void and unconstitutional. In the case of *City of Washington v. Reed*, 70 S. W. 2d 121, the Missouri Court of Appeals held that a license tax of \$4 per day was discriminatory and prohibitory and therefore unconstitutional and void.

Conclusion

For the reasons that the ordinance is unconstitutional because (1) imposing an excessive tax on petitioners' activity, (2) burdening and abridging petitioners' constitutional rights and (3) discriminating between persons of the same class in violation of the Fourteenth Amendment, and that the court below has ruled in favor of its validity, there is here presented a case calling for the exercise of this Court's powers of supervision under Section 240 (a) of the Judicial Code [28 U. S. C. A. paragraph 347 (a)] and Rule 38, paragraph 5 (b), Rules of this Court. There is also involved the important question of jurisdiction of the trial court over the subject matter. To that end this petition for

writ of certiorari should be granted so as to correct the errors complained of here, and committed by the court below against the petitioners.

Respectfully submitted,

HAYDEN C. COVINGTON

Attorney for Petitioners

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MAR 8 1943

CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 450

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEDERS, ROBERT LAMBORN and ROBERT
MURDOCK, Jr.

Petitioners

v.

CITY OF JEANNETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually and
as Mayor of City of Jeannette (Pennsylvania)

Respondents

ON CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

PETITIONERS' BRIEF

HAYDEN C. COVINGTON

Attorney for Petitioners

INDEX

SUBJECT INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
The Statute	2
Statement	4
Facts	5
History of Proceedings and Federal Questions Raised Below	14
Specification of Errors to be Urged	15
Argument—This Court should hold that the ordinance is void and unconstitutional as construed and ap- plied to petitioners' activity because it abridges and unduly burdens by taxation the exercise by peti- tioners of their rights of freedom of speech, press and worship of ALMIGHTY GOD, as His min- isters preaching from house to house, contrary to the First and Fourteenth Amendments to the United States Constitution	16
Conclusion	17

CASES CITED

	PAGE
Alexander v. Cosden Pipe Line Co., 290 U. S. 484, 487	16
Hubbard v. Tod, 171 U. S. 474, 494	16
Langes v. Green, 282 U. S. 531, 536-538	16
Murdock, et al. v. Commonwealth, Nos. 480 to 487, October Term 1942	16
Reid et al. v. Brookville, et al., 39 F. Supp. 30	1
United States v. Henry Prentiss & Co. 288 U. S. 73, 88	17

STATUTES CITED

Civil Rights Act as amended in 1871 [8 U.S.C.A. s. 43]	4, 14
Jeannette (Pa.) city ordinance No. 60	2, 6
Judicial Code [28 U.S.C.A. 347 (a)], Section 240 (a)	2
United States Constitution	
Amendment I	16
Amendment XIV	16

MISCELLANEOUS CITATIONS

	PAGE
ALMIGHTY GOD, Word of [The Bible]:	
Isaiah 43: 9-12	6
Isaiah 61: 1, 2	6
Isaiah 61: 1-3	8
Ezekiel 9: 4	7
Matthew 10: 7-12	6
Matthew 10: 7-15	8
Matthew 24: 14	6, 8
Luke 10: 5, 6	8
John 18: 37	8
Acts 3: 22, 23	8
Acts 4: 19, 20	8
Acts 5: 34-39	8
Acts 20: 20	6, 8
1 Corinthians 9: 16	6
1 Peter 2: 21	8
1 Peter 2: 9, 21	6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

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Opinions Below

• The opinion of the United States Circuit Court of Appeals is reported in 130 F. 2d 652, and that of the United States District Court appears in 30 F. Supp. 32. The companion case of *Reid et al. v. Brookville, et al.*, is reported in 39 F. Supp. 30.

Jurisdiction

Section 240 (a) of the Judicial Code [28 U. S. C. A. 347 (a)] sustains jurisdiction of this Court.

The Statute

The legislation, constitutionality and validity of which, as construed and applied to petitioners, is here drawn in question, is an ordinance of the City of Jeannette, Pennsylvania, known as Ordinance Number 60 and which reads as follows:

City of Jeannette, Pa.

Ordinance No. 60

An Ordinance regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Borough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business, and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be It Ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby ordained and enacted by the authority of the same.

Section I. That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact such business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

For one day \$1.50, for one week seven \$7.00 dollars, for two weeks twelve \$12.00 dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

Section II. That all persons huckstering, peddling, or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor, the sum of ten \$10.00 Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with the costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the

Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this first day of March, A. D. 1898.

D. E. CARLE, President of Council.

Attest: GEO. S. KIRK, Secretary.

I, J. CLAIRE MANSON, City Clerk, of the City of Jeannette, Pennsylvania, hereby certify that the foregoing is a true and correct copy of Ordinance No. 60 of the Borough of Jeannette (now the City of Jeannette), Pennsylvania.

J. CLAIRE MANSON, City Clerk.

[Seal] [R. 138]

Statement

Petitioners brought this action in the United States District Court for the Western District of Pennsylvania, under the Civil Rights Act as amended in 1871 [8 U. S. C. A. s. 43] to restrain interference by respondents with petitioners' exercise of their fundamental personal right to distribute literature and simultaneously receive money contributions to aid in printing and distributing more like literature from house to house and upon the streets within the City of Jeannette, alleging that respondents had repeatedly harassed, arrested, prosecuted, unlawfully convicted and unlawfully forced petitioners and other of Jehovah's witnesses to appeal said convictions to the Court of Quarter Sessions of Westmoreland County, thence to the Superior and the Supreme

Courts of the Commonwealth; all of which greatly damaged and injured petitioners and other of Jehovah's witnesses and frustrated and practically stopped the lawful activity of Jehovah's witnesses in the exercise of their rights of freedom of speech and of press and freedom to worship ALMIGHTY GOD, causing petitioners to suffer irreparable injury and damage in future unless enforcement of said ordinance was enjoined. R. 3-14.

FACTS.

Each of the petitioners is an ordained minister of Jehovah God, representing the Watch Tower Bible and Tract Society, which Society is a corporation created under law of Pennsylvania for the purpose of disseminating Bible truths in various languages by means of tracts, books, booklets and other lawful means. (R. 23) That Jehovah's witnesses are God-fearing men and women, ordained ministers of the gospel, wholly and entirely devoted to the service of ALMIGHTY GOD and have covenanted with Jehovah to serve Him and to do His will and to follow in the footsteps of Christ Jesus by preaching from house to house; that the Watch Tower Bible & Tract Society is used by Jehovah's witnesses as publishers to assist them in disseminating Bible truths and to preach the gospel.

Petitioners and all other of Jehovah's witnesses possess credentials showing that they are duly ordained to preach the gospel and to represent the Watch Tower Bible & Tract Society. See Petitioners' Exhibit No. 38. (R. 24) That Jehovah's witnesses throughout the earth are organized into groups where they as groups and as individuals co-operate with one another for the purpose

of preaching the gospel and taking to the people information concerning God's kingdom in an efficient and orderly manner. That Jehovah's witnesses visit the people in different communities at regular intervals to call upon them with the message of the Kingdom, using phonographs to present the books and booklets and to encourage and stimulate home Bible study. That each one of Jehovah's witnesses is an ordained minister of ALMIGHTY GOD. That Jesus Christ taught publicly on the streets and from house to house, and that His apostles also taught publicly and preached from house to house, and that all true followers of Jesus Christ in the present day are commissioned, anointed and ordained as ministers of Jehovah God for the sole purpose of preaching the gospel from house to house and publicly. Isaiah 61: 1, 2; Isaiah 43: 9-12; Matthew 10: 7-12; Matthew 24: 14; Acts 20: 20; 1 Peter 2: 9, 21; 1 Corinthians 9: 16. That in order to do the work quickly and efficiently books and booklets in various languages are employed instead of conversation, so as to save time and enable people at their leisure to study in their homes and learn for themselves. That the work of Jehovah's witnesses has been carried on for many years in Jeannette; that in March, 1939, while Jehovah's witnesses were distributing literature from house to house and receiving money contributions they were arrested and warned to discontinue the work or otherwise they would be prosecuted under Ordinance No. 60.

Thereafter, on April 2, 1939, petitioners delivered a letter to the police and mayor of Jeannette, explaining the nature of their work and showing why the ordinance did not apply to them; which said letter appears in the record as follows (R. 28-9):

LETTER TO JEANNETTE POLICE

[Petitioners' Exhibit 2]

Southwestern Pennsylvania Division

JEHOVAH'S WITNESSES

907 Middle Street, N. S.

Pittsburgh, Pa.

Fairfax 6776

April 2, 1939.

To Police Department,
Attention Chief of Police,
Jeannette, Pennsylvania.

May it please you to notice that in obedience to the command of Almighty God, JEHOVAH, and under the leadership of His King Christ Jesus, we whose names and addresses appear on the appended list are engaged regularly in the worship of the Almighty God by preaching the gospel of Jehovah's kingdom. This we do, as Jehovah's witnesses, by going from house to house and exhibiting to people of good will that message in printed form, as commanded by Jehovah.

The purpose in sending this letter and list of names is that Jehovah's witnesses may be identified to you, and that there may be no occasion for misunderstanding on your part as to the object of our presence and work in your community.

In your community there are those who desire to know the purposes of Jehovah. It is the will of Jehovah that such persons shall be informed. In His Word, the Bible,

He commands His witnesses to find those people and deliver His message to them. His commands to His witnesses are written at Isaiah 61:1-3; Ezekiel 9:4; Matthew 24:14; Matthew 10:7-15; Luke 10:5, 6; John 18:37; Acts 20:20; 1 Peter 2:21.

From time to time, therefore, some of us shall do this work among the people of your community.

One or more sound cars, equipped to present the same message contained in short Bible talks, with appropriate music, at times accompany those who do this work. Programs without cost to the people are put on at public parks, institutions and other places.

We who engage in this work come to your community not to canvass or solicit, nor to peddle goods, wares or merchandise. We do not ask for a permit, for the reason that the Almighty Creator, JEHOVAH, whose law is above all laws, commands us, as His witnesses, to preach the gospel of His kingdom; therefore to ask any human creature for a permit would be an insult to Jehovah and a violation of our covenant with Him, and would result in our everlasting destruction.—Acts 3:22, 23; Acts 4: 19, 20; Acts 5: 34-39.

We and each of us are the duly accredited representatives of the Watch Tower Bible & Tract Society, of Brooklyn, a corporation formed for the purpose of disseminating Bible truths among the people.

[Here follows list of names and addresses mentioned in paragraph 1 of above letter, including names of most of petitioners and also of more than fifty other persons.]

On the date of delivery of the foregoing letter several of Jehovah's witnesses were again arrested and this time complaint was filed in the Mayor's Court of the City of Jeannette, charging them with violation of said ordinance for failure to purchase a peddler's license. On such date petitioners' representative Hessler advised respondent Mayor O'Connell that Jehovah's witnesses had no objection to the ordinance as a commercial ordinance, but objected to its being misapplied to their work of preaching the gospel. R. 30.

That on April 2, 1939, twenty-one of Jehovah's witnesses were arrested, and 18 were tried and convicted and forced to appeal to the Court of Quarter Sessions. That on a subsequent appeal to the Pennsylvania Superior Court from the Court of Quarter Sessions petitioners' failure to have attached to original appeal papers a certified copy of the mayor's transcript resulted in dismissal of that appeal [137 Pa. S. C. 445; 9 A. 2d 179], and from there the case was taken to the Supreme Court of the Commonwealth [137 Pa. S. C. XXXIII] and then to the Supreme Court of the United States, where certiorari was denied [309 U. S. 674, 699], because decided on non-federal ground. R. 101-102.

That since April, 1939, to wit, in February, 1940, there were a number of prosecutions and convictions of Jehovah's witnesses under said ordinance and appeals to the Court of Quarter Sessions, where those cases are now pending. That there have been more than thirty (30) arrests since the original twenty-one arrests. R. 9, 32, 38, 41.

Petitioners' Exhibits 3 to 10 inclusive were books published by the Watch Tower Bible & Tract Society and distributed by Jehovah's witnesses in Jeannette.

Petitioners' Exhibits 11 to 36 inclusive were booklets and pamphlets distributed by Jehovah's witnesses in Jeannette.

The manner in which the work was carried on in Jeannette is that Jehovah's witnesses visited the homes, rang the bell or knocked, and when a person came to the door the caller said, "I represent the Watch Tower Bible & Tract Society" or "I am one of Jehovah's witnesses, and we have very important information for you in the form of a phonograph record which I will play, and it will take only a few minutes for you to hear it." Whereupon the caller demonstrated with a portable phonograph and played Petitioners' Exhibit 37. At conclusion of playing of phonograph record the householder was asked whether he liked the record, and then a card was presented for him to read, explaining how he may obtain "The Watchtower", published twice a month, and if he did not care to take "The Watchtower" then attention was called to the fact that one of the bound volumes could be secured on a contribution of twenty-five cents. That on the occasion of the first arrests Jehovah's witnesses were distributing the two booklets "Face the Facts" and "Fascism or Freedom", taking a contribution of five cents from persons receiving the two booklets, and to any who did not care to contribute and desired the booklets copies were given free. R. 35.

That the reason Jehovah's witnesses did not apply for a permit or purchase a license under the ordinance was because they were *not* peddlers but ministers of Jehovah God doing this work in obedience to His explicit command, and for them to ask for a permit to do what Jehovah has commanded would be an insult to the Creator, as His law is supreme and above all human

law. That repeatedly and on several occasions after April 2, 1939, throughout the year 1939 and throughout the year 1940, up to the time that this action was filed, Hessler had many conversations with respondent O'Connell, imploring with him not to interfere with Jehovah's witnesses and to discontinue arresting them under the ordinance; but that the mayor always insisted that the law was valid and that they would continue to enforce it as long as Jehovah's witnesses distributed literature from house to house in Jeannette and accepted money contributions.

That the repeated arrests and prosecutions have curtailed the work of Jehovah's witnesses, intimidated people of good-will who reside in Jeannette, causing such persons to be afraid to accept any literature offered by Jehovah's witnesses, and caused the company of Jehovah's witnesses to diminish and move away from the community and avoid working in the community.

That the expense of defense and appeal of the various cases has exceeded \$1,700.00 (R. 67-79), in addition to hundreds of dollars of expense incurred by individuals for travel costs and inconveniences and damage through loss of jobs and reputation. That the Watch-Tower Bible and Tract Society receives 5¢ each on books sent to the full-time worker. If a contribution of 25¢ is received there is a difference of 20¢ which the full-time worker uses toward expenses. (R. 44) They do not always receive money contributions when the books are placed, as more often the books are left free of charge. (R. 44) They give more books and booklets away free than the number for which contributions are received. (R. 44) The amount of contributions received by each worker runs between \$2 and \$4 per month (R. 45) and the "profit" or differ-

ential on each book placed would be much less than that because of sending in to the Society the amount remitted for each book placed with the public. (R. 44, 45).

The expenses for operation run between \$60 and \$85 per month, which includes cost of books given away and those for which contributions are received. (R. 48) The difference between income and outgo is taken from reserve fund which the witness, Hessler, had before going into the work. (R. 49) In the case of the part-time worker who usually had secular employment during the week to support himself the literature is provided by the Society at less than cost price of publication or 20¢ each book. The books are received by the part-time publisher from his local company or group congregation that receives them directly from the Society. If the part-time publisher receives a contribution of 25¢ for a book he retains a difference of 5¢ which is applied toward his expense of bringing literature to the people and toward the cost of books which he distributes freely to the people. (R. 49-50, 75) Because many books are given away by each part-time publisher or worker and because of the expense in bringing the literature to the people no profit is made by the part-time worker—he also operates at a monetary loss. (R. 49-51; 106-108) A *company* is an organized group or gathering of Jehovah's witnesses numbering from two to two hundred or more. (R. 54) The companies pay the Watchtower Society for each book received the sum of 20¢. (R. 49-51, 75).

Because of the great persecution and difficulties experienced by petitioners around Pittsburgh in western Pennsylvania they had organized a non-profit charitable corporation for purpose of operating a Kingdom School to provide suitable education for their children who had

been expelled from public schools because of their refusal to salute any flag, including the American flag. This organization was known as Kingdom Service Association and was used also to finance some of the major legal cases and difficulties in western Pennsylvania, including the Jeannette controversy. (R. 69) The association kept records. (R. 69-71, 78-81) Its income is entirely from voluntary contributions of Jehovah's witnesses. It did not make a profit off of the preaching activity and received no commission or income whatsoever from any books placed by Jehovah's witnesses. R. 69, 75, 79-83, 106-114, 125-129, 133.

The books of one of the *companies* or local congregations were produced in court. It contained a record of the books placed with each member of the local congregation by the local office. The figures for one month demonstrate the account. The book account showed \$398.14 total for the month including a carry-over of \$142.42 from the month before with \$237.91 disbursements for that month. Another month shows a total at the end of month of \$484.81 including a \$162.73 carry-over from the previous month. (R. 116-121) The local *company* was required to pay for telephone rental and for rental of a hall in the amount of \$100 per month not shown in the above account. (R. 120) No individual receives a profit or salary from the work. The *company* pays the Society 20¢ each for books received (R. 121), and charges each member of the *company* 22¢ each; the difference between which, 2¢, was used for partial payment of the damage, shipping and deterioration of the books, etc. (R. 121, 123-125) The *company* owes the Watch Tower Bible & Tract Society a balance of \$1300 for books. (R. 125-128) The amount of money received each month for books does

not take care of the operating costs, rent, telephone, etc., which deficit is taken care of by voluntary contributions of members of the company. (R. 126) The inventory taken showed \$520 worth of books on hand and a large account receivable from various members for books placed to Jehovah's witnesses in the company. R. 128-129.

Hessler also testified that the reason Jehovah's witnesses did not apply for a license or pay the peddler's tax required under the ordinance was because they were not peddlers but ministers of Jehovah God doing this work in obedience to His explicit command, and for them to ask for a permit to do what Jehovah has commanded would be an insult to the Creator, as His law is supreme and above all human law. R. 39.

History of Proceedings and Federal Questions Raised Below

In the complaint for injunction petitioners alleged that the ordinance as construed and applied was unconstitutional because of abridging their rights of freedom of press and of worship of ALMIGHTY GOD. (R. 9) See particularly paragraph seventeen of the complaint. (R. 11) It was alleged that they were deprived of their rights without due process of law and in violation of the Civil Rights Act of 1871. (R. 3, 10) The answer denied that the ordinance had been unconstitutionally applied and denied that the petitioners had been deprived of any rights contrary to the Federal Constitution. (R. 20) The trial court considered the federal questions properly presented and held that the ordinance had been applied in such a manner as to violate the Federal Constitution. (R. 137, 142) The United States Circuit

Court of Appeals held that the federal questions had been properly raised and presented, both in the trial court and in said appellate court, and held that the ordinance was constitutional. (R. 160, 161, 163)

Specification of Errors to be Urged

The United States Circuit Court of Appeals for the Third Circuit committed reversible error in reversing the judgment of the United States District Court and ordering the complaint dismissed because the court should have held that the ordinance in question, as construed and applied to petitioners, is violative of the United States Constitution, in that it abridges and unduly burdens, by taxation, petitioners' rights of freedom of speech and of press and freedom to worship ALMIGHTY GOD as by Him commanded in the Scriptures and according to dictates of conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

This Court should hold that the ordinance is void and unconstitutional as construed and applied to petitioners' activity because it abridges and unduly burdens by taxation the exercise by petitioners of their rights of freedom of speech, press and worship of ALMIGHTY GOD, as His ministers preaching from house to house, contrary to the First and Fourteenth Amendments to the United States Constitution.

The constitutionality of this same ordinance has been fully discussed in the petitioners' brief filed in the cases of *Murdock, et al. v. Commonwealth*, Nos. 480 to 487, October Term 1942, pending in this Court. Here we refer to argument in that brief and hereby adopt it as a part hereof as though set forth at length herein.

It is noticed that the greater part of the opinion of the Circuit Court of Appeals relates to sufficiency of the allegations of the complaint to confer jurisdiction upon the district court. On this point the Circuit Court of Appeals ruled in favor of petitioners and held that the allegations conferred jurisdiction. Respondents failed to file a *cross petition* for writ of certiorari, and in the absence of such, are not entitled to be heard in opposition to the parts of the opinion and decision which are adverse to them. In such circumstance the general rule of this Court is that consideration of the case will be confined to an examination of errors asserted by petitioner where respondent has failed to present a *cross petition* for certiorari. *Alexander v. Cosden Pipe Line Co.*, 290 U. S. 484, 487; *Langnes v. Green*, 282 U. S. 531, 536-538; *Hubbard v. Tod*, 171 U. S. 474, 494; *United States v.*

Henry Prentiss & Co., 288 U. S. 73, 88. Hence petitioners devote no time to a discussion of the question as to whether or not the District Court had jurisdiction.

CONCLUSION

For the reasons discussed, it is manifest that the judgment of the Court below should be reversed and the judgment of the District Court affirmed.

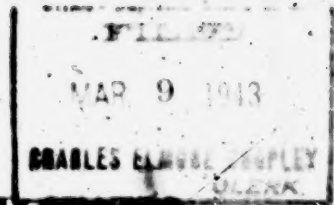
Respectfully and confidently submitted,

HAYDEN C. COVINGTON

117 Adams St., Brooklyn, N. Y.

Attorney for Petitioners

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 450

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEIDERS, ROBERT LAMBORN and ROBERT
MURDOCK, JR.

Petitioners

v.

CITY OF JEANNETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually and
as Mayor of City of Jeannette (Pennsylvania)

Respondents

ON CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONERS' REPLY BRIEF

HAYDEN C. COVINGTON
Attorney for Petitioners

INDEX

SUBJECT INDEX

	PAGE
Statement	1
Conclusion	5

CASES CITED

Atkins & Co. v. Dunn (CCA-7), 28 F. 2d 5	4
Binderup v. Pathe Exchange 263 U. S. 291, 305	2
Borden's Farm Prod. Co., Inc. v. Baldwin 293 U. S. 194	2
City of Louisville v. Louisville R. Co. (CCA-6), 39 F. 2d 822	4
City of Toledo v. Toledo Ry. & Light Co. (CCA-6), 259 F. 450	4
Columbus Ry. Power & Light Co. v. Columbus 249 U. S. 399, 406	2
Covington & L. Turnpike Road Co. v. Sanford 164 U. S. 578	2
General Investment Co. v. New York Central Ry. Co. 271 U. S. 228	4
Hague v. C. I. O. 307 U. S. 496	4
Jones v. Opelika 316 U. S. 584, June 8, 1942, vacated Feb. 15, 1943, and reargument ordered	4

CASES CITED

	PAGE
Lovering & Garrigues Co. v. Morrin 289 U. S. 103, 105, 108	3
Manchester v. Leiby 117 F. 2d 661	2
May Coal & Grain Co. v. Kansas (CCA-8), 73 F. 2d 345	2
Mosher v. City of Phoenix 287 U. S. 29, 30	3
Oney v. Oklahoma City 120 F. 2d 861	2
S. Covington Ry. Co. v. Newport 259 U. S. 97	2

STATUTES CITED

Judicial Code	
Section 24 (1)	4
Section 24 (14)	1, 4
United States Constitution	
Amendment XIV	2, 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

No. 450

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
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Respondents

ON CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONERS' REPLY BRIEF

Jurisdiction of the district court is questioned by respondents. We submit that the court will not consider the objection raised because no cross petition was filed. If the court does give consideration to said argument against the jurisdiction of the court then we submit that it is without merit.

Allegations of the complaint were sufficient to invoke jurisdiction of the trial court under Section 24 (14) of

the Judicial Code because the facts pleaded showed that the ordinance in question had been enforced against petitioners in such a manner as to abridge their rights of freedom of speech, press and worship of Almighty God contrary to the "due process" clause of the Fourteenth Amendment and the Civil Rights Act.

In support of this contention we adopt the entire discussion on this point by Judge Maris (R. 150-161) and make the same a part hereof.

The identical complaint containing the same allegations has been questioned many times, held to state a cause of action and to confer jurisdiction upon the district court. Circuit Courts of Appeals have so held twice. *Oney v. Oklahoma City*, 120 F. 2d 861; *Manchester v. Leiby*, 117 F. 2d 661.

Similar allegations as to fact concerning state action against the right of individuals, together with the claim that such action violated the Fourteenth Amendment, have been held sufficient to confer jurisdiction upon the district court. *May Coal & Grain Co. v. Kansas* (CCA-8), 73 F. 2d 345; *Borden's Farm Prod. Co., Inc. v. Baldwin*, 293 U. S. 194; *S. Corington Ry. Co. v. Newport*, 259 U. S. 97; *Corington & L. Turnpike Road Co. v. Sanford*, 164 U. S. 578; *Binderup v. Pathe Exchange*, 263 U. S. 291, 305.

From the facts alleged in the complaint it must appear that the claim is so wholly lacking in merit as to be frivolous and patently unsubstantial. It must manifestly be without color or merit. These factors must appear before the court is warranted in holding that jurisdiction does not exist. In *Columbus Ry. Power & Light Co. v. Columbus*, 249 U. S. 399, 406, suit was to enjoin enforcement of a city ordinance. In answering the contention

that the trial court did not have jurisdiction this court said:

"We are of opinion that there was jurisdiction in the District Court to entertain the bill as it presented questions arising under the Fourteenth Amendment to the federal constitution not so wholly lacking in merit as to afford no basis of jurisdiction. Jurisdiction does not depend upon decision of the case, and should be entertained if the bill presents questions of a character giving the party the right to invoke the judgment of a federal court."

In *Mosher v. City of Phoenix*, 287 U. S. 29, 30, an injunction suit, this court said:

"We are of the opinion that the allegations of the bills of complaint, that the city acting under color of state authority was violating the asserted private rights secured by the federal constitution presented a substantial federal question, and that it was error of the District Court to refuse jurisdiction."

In *Lovering & Garrigues Co. v. Morrin*, 289 U. S. 103, 105, 108; an injunction suit, this court in discussing the question said:

"If the bill or the complaint sets forth a substantial claim, a case is presented within the federal jurisdiction, however the court, upon consideration, may decide as to legal sufficiency of the facts alleged to support the claim."

In that case the court held there was no jurisdiction because at the time the suit was filed two cases had been decided adversely to complainant on the identical facts alleged.

At the time the complaint was filed in this case the

Jones v. Opelika cases (316 U. S. 584, June 8, 1942, vacated Feb. 15, 1943, and reargument ordered) had not been decided and at such the law was not settled on the question against the petitioners. See *Atkins & Co. v. Dunn* (CCA-7), 28 F. 2d 5; *City of Louisville v. Louisville R. Co.* (CCA-6), 39 F. 2d 822; *City of Toledo v. Toledo Ry. & Light Co.* (CCA-6), 259 F. 450; and *General Investment Co. v. New York Central Ry. Co.*, 271 U. S. 228.

It was unnecessary that there be any allegation in reference to amount of money involved because jurisdiction is not claimed under Section 24 (1) but under Section 24 (14) and the Civil Rights Act. The court had jurisdiction on authority of *Hague v. C. I. O.*, 307 U. S. 496:

"Due process of law" means the law of the land and is not confined to any particular type or sort of abridgment or action on the part of the state. Since the Civil Rights Act is relied upon to confer jurisdiction all that was necessary to allege was that the respondents acted under color of the ordinance. More than this was alleged, and ample facts showing that rights of freedom of press, speech and worship had been abridged contrary to the Fourteenth Amendment, so as to confer jurisdiction under Section 24 (14) of the Judicial Code.

If the doctrine contended for by respondents be sustained, it will be impossible for a litigant to determine when jurisdiction exists under the Judicial Code in the United States District Courts where state action is involved.

Judge Maris speaking for the court below says:

"For were we to hold that jurisdiction exists only if the proven facts justify the conclusion that there has been a deprivation of liberty without due process of

law it would necessarily follow that in every such case the court would have to hear and decide the merits. This would be a manifest absurdity."

The extended facts alleged in the complaint clearly showed that due process of law had been violated by wrongly applying the ordinance so as to abridge the rights of freedom of speech, press and worship guaranteed by the first amendment which is made applicable against the states by the fourteenth.

It is respectfully submitted that the trial court had jurisdiction to entertain the action and that the Circuit Court of Appeals was correct in so holding but was in error in declaring the ordinance did not abridge the rights of petitioners as applied.

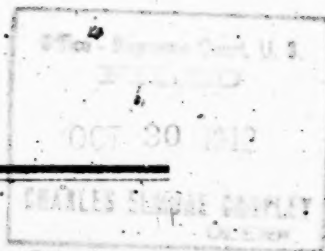
Confidently and respectfully submitted.

HAYDEN C. COVINGTON

117 Adams St., Brooklyn, N. Y.

Attorney for Petitioners

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IN THE
Supreme Court of the United States

No. 450 October Term, 1942

ROBERT L. DOUGLAS, ALBERT R. GUN-
DECKER, EARL KALLBRENNER, CARROLL
CHRISTOPHER, VICTOR SWANSON, NICHOLAS
KODA, CHARLES SEDERS, ROBERT
LAMBORN AND ROBERT MURDOCK, JR.,

Petitioners

v.

CITY OF JEANNETTE, (Pennsylvania), a mu-
nicipal corporation, and JOHN M. O'CONNELL,
individually and as Mayor of City of Jeannette
(Pennsylvania),

Respondents.

**ANSWER OF THE CITY OF JEANNETTE TO
THE PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE THIRD CIRCUIT**

FRED B. TRESCHER,

*Solicitor for the City of
Jeannette.*

Irwin Gas Coal Bldg.,
Greensburg, Pa.

INDEX

	PAGE
Answer of the City of Jeannette to the Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit	1
Brief on Behalf of Respondent	7
TABLE OF CASES CITED	
Bowden et al. v. City of Fort Smith, Arkansas, 62 S. Ct. 1231	7, 8, 12
Carlson v. People of California, 310 U. S. 106, 60 S. Ct. 746	9
Commonwealth v. Gardner, 133 Pa. 284, 289, 296 (1890)	11
Commonwealth v. Pafnis, 141 Pa. Super. 430, 15 A. 2d, 481, 485	11
Commonwealth v. Reid, 144 Pa. Super. 569, 20 A. 2d, 841	12
Commonwealth of Pennsylvania v. Robert J. Murdock, Jr. et al., Nos. 1 to 8, both inclu- sive, April Term, 1943	12
Grosjean v. American Press Company, 297 U. S. 233	12
Hague v. Committee for Industrial Relations, 307 U. S. 496	14
Hanover Fire Insurance Company v. Harding, 272 U. S. 494	12
Pittsburgh v. Ruffner, 134 Pa. Super. 192, 4 A. 2d, 224	12
Schneider v. Town of Irvington, 308 U. S. 147	8
Southern Railway Company v. Greene, 216 U. S. 400	12
Stewart v. City of Jeannette, 309 U. S. 674, 699	8
Thornton v. State of Alabama, 310 U. S. 88, 60 S. Ct. 736	9
Warren Borough v. Geer, 117 Pa. 207, 211, 212 (1887)	10

1

Answer to Petition

IN THE
SUPREME COURT OF THE UNITED STATES

No. 450 October Term, 1942

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALLBRENNER, CARROLL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEDEES, ROBERT LAMBORN AND ROBERT MUR-
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Petitioners,

v.

CITY OF JEANNETTE, (Pennsylvania), a municipal cor-
poration, and JOHN M. O'CONNELL, individually and as
Mayor of City of Jeannette (Pennsylvania),

Respondents.

**ANSWER OF THE CITY OF JEANNETTE TO THE
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT**

To the Supreme Court of the United States:

The answer of the City of Jeannette to the petition for writ of certiorari in the above entitled proceeding shows:

(A)

SUMMARY STATEMENT OF MATTERS INVOLVED

1. PRELIMINARY STATEMENT

The assertion of the petitioners that Ordinance No. 60 of the City of Jeannette imposes a tax of \$10.00 per day

Answer to Petition

or \$3650.00 per annum is preposterous. The license fee imposed by the ordinance is \$1.50 per day for a daily permit and \$1.00 a day or less if the canvasser wishes to work on a weekly basis. Ordinance No. 60 of the City of Jeannette is quite similar to the Fort Smith, Arkansas, ordinance which was involved in the case of Bowden et al. v. City of Fort Smith, 314 October Term 1941, in this Court, 62 S. Ct. 1231, except that the latter imposes higher fees. The Fort Smith ordinance imposes a license fee of \$2.50 per day, \$10.00 per week, and \$25.00 per month. The complaint filed in the District Court does not attack the ordinance on the ground that the license fee of \$1.50 per day, or \$1.00 per day on a weekly basis, is exorbitant or burdensome (R. 16 to 21).

2. STATEMENT OF FACTS

This action is brought by the petitioners in the District Court on the theory that the City of Jeannette, under color of Ordinance No. 60, was depriving the petitioners of certain constitutional rights, and that the Civil Rights Act of 1871 (8 U. S. C. A., Section 43), gave them a right of action in such case.¹ They asserted that Section 24 (14) of the Judicial Code (28 U. S. C. A., Section 44 (14)),² gave

¹ Section 1979 Revised Statutes is as follows:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

² Section 24 (14) of the Judicial Code is as follows:

"The district courts shall have original jurisdiction as follows:

Answer to Petition

the District Court jurisdiction to entertain the action. The complaint asserted generally that the petitioners were being deprived of their rights of freedom of worship, freedom of speech, of press, and of assembly, but did not assert a single fact which showed, or tended to show a deprivation of any of these rights. The burden of the complaint is that when the petitioners were arrested, they were compelled to undergo the expense of appeals to the Higher Courts (R. 9). There is no assertion anywhere in the bill that the petitioners were at any time denied a fair trial, and no averment that any of their appeals to the higher Courts were sustained. There is no suggestion that the fees charged in the ordinance are arbitrary or burdensome. To apply for a permit, the petitioners say, would be "an insult to Almighty God."

In an effort to sustain their averment that they were put to considerable expense in defending themselves in the several Courts of Pennsylvania and of the United States, (and not for the purpose of showing that the fees under the ordinance were burdensome), the petitioners offered testimony concerning sums of money paid out for legal expense. The testimony shows that not a penny was paid out by any of the petitioners. All legal expenses were paid from the funds of a nonprofit corporation, known as Kingdom Service Association or Kingdom Service Company (R. 69 to 73). The latter was maintained entirely by sub-

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States or of any right secured by any law of the United States, providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

Answer to Petition

scription or contributions. Kingdom Service Association had been ostensibly organized to provide and operate a school for children of members of Jehovah's Witnesses, but its expenditures for legal services far exceeded the sums paid out for the maintenance of schools (R. 106 to 112).

The position of the City of Jeannette and of Mayor O'Connell was that Jehovah's Witnesses were engaging in a commercial enterprise; that each of its so-called solicitors received a profit which ranged all the way from twenty-five per cent. to four hundred per cent. on the sale of literature and books (R. 44); that the provisions of Ordinance No. 60 had been enforced only against members of the group who sold literature from door to door in the City without a license. In this connection, it was shown that solicitors purchased their wares at prices ranging from five to twenty cents per book, and sold them at the uniform price of twenty-five cents (R. 75); that in every instance in which members of Jehovah's Witnesses were arrested, there was testimony which warranted and amply supported the findings that the persons convicted had actually sold books (R. 100 to 106).

The methods employed by Jehovah's Witnesses were identical with those used in ordinary business transactions. Records were kept of receipts and disbursements. The records of the Central Unit, Pittsburgh Company of Jehovah's Witnesses show quite a substantial monthly profit (R. 116 to 118). Ordinary credit methods were employed by the Watch Tower Company, by the several companies of Jehovah's Witnesses, and by the individual solicitors. The petitioners were fond of referring to the sums received, paid out or charged on their books and records as "Contributions", but frequently they dropped this subterfuge, and the record is replete with such terms as

Answer to Petition

"invoices", "prices", "consignments", "inventory", and "charges" (R. 116 to 120).

The payments shown to have been made for legal services and for expenses were quite liberal. The amount which, according to the testimony of the petitioners, was spent on three pieces of litigation in which the City of Jeannette was concerned was sufficient, if a license fee was obtained on a weekly basis, to have maintained a solicitor in the City of Jeannette every day for a period of almost five years (R. 69). There was thus no averment and no proof that the license fee charged under the ordinance was excessive or burdensome. On the contrary, the record would tend to show that the several companies through which Jehovah's Witnesses do business could quite well afford to pay the modest fee fixed by the ordinance for engaging in business.

(B).

QUESTIONS PRESENTED

(1) The assertion that Ordinance No. 60 of the City of Jeannette imposes a daily tax of \$10.00 or an annual tax of \$3650 is without any foundation whatsoever. The reasonableness of the license fee of \$1.50 per day or \$1.00 per day or less on a weekly basis is not asserted in the complaint, and the question was not raised in the District Court, in the Circuit Court, and is not properly before this Court.

(2) This question has been repeatedly ruled upon by this Court.

(3) This question has been repeatedly ruled upon by this Court.

Answer to Petition

(4) Both the District Court and the Circuit Court decided this question favorably to the petitioners, and they are not in a position to complain about it.

(C)

REASONS RELIED ON FOR ALLOWANCE OF WRIT

The reasons relied upon by the petitioners, and some of the cases therein cited, are discussed in the respondent's brief accompanying this reply.

FRED B. TRESCHER,

Solicitor for the City of Jeannette.

BRIEF ON BEHALF OF RESPONDENT

The elasticity of conscience displayed by the petitioners in their brief must cause this Court to wonder whether their religious convictions are worthy of the care and attention heretofore given them. In the District Court and in the Circuit Court, the petitioners contended that it would do violence to their consciences to ask for or receive any license under a man-made law. They now, inferentially, say they are willing to apply for a permit but that the rates imposed by the ordinance are excessive and burdensome. This attempt to change their position and to raise in this Court, a question which was not raised in either the pleadings or the proofs, and was not passed upon by either the District Court or the Circuit Court, was, of course, brought about by the decision of this Court in the case of *Boydett et al. v. City of Fort Smith, Arkansas*, 62 S. Ct. 1231, decided June 8th, 1942.

The petitioners, by their pleadings and by their proofs, attempted to show jurisdiction in the Federal Courts on the theory that it was burdensome for them to pay counsel fees to defend actions in the State Courts. They did not contend that the license fees imposed by the ordinance would operate as a substantial clog on their activities. Their testimony showed, or tended to show an expenditure of some Seventeen hundred Dollars principally for attorney fees in connection with litigation with the City of Jeannette. These expenses were not borne by the petitioners but were paid for by a corporation known as the Kingdom Service Association. Kingdom Service Association derives its funds from contributions made to it by so-called companies of Jehovah's Witnesses, which un-

Argument

doubtedly, according to the showing in this case, operated at a substantial profit. The fees paid out were more than ample to have kept a reasonable number of solicitors in the City of Jeannette for years.

In *Bowden v. City of Fort Smith, Arkansas*, 62 S. Ct. 1231, this Court pointed out that "If the size of the fees were to be considered, to reach a conclusion one would desire to know the estimated volume, the margin of profit, the solicitor's commission, the expense of policing and other pertinent facts of income and expense." There was no effort to show any of these things with reference to the license fee specified in the ordinance; and the question is consequently not fairly or properly before this Court.

Ordinance No. 60 of the City of Jeannette requires all persons who solicit orders for or deliver merchandise of any kind to first obtain a license to transact such business. The ordinance was directly before this Court on petition for writ of certiorari in the case of *Stewart v. City of Jeannette*, 309 U. S. 674, 699, and a certiorari was denied. It is the "common type of ordinance requiring some form of registration or license of hawkers or peddlers", to which this Court was referring as a lawful exercise of State power in the case of *Schneider v. Town of Irvington*, 308 U. S. 147. The Irvington ordinance imposed police censorship. The City of Jeannette ordinance gives discretion to no one. Ordinance No. 60 is the type of ordinance to which this Court was alluding to in the Irvington case when it said:

"We are not to be taken as holding that commercial soliciting and canvassing may not be subject to such regulation as the ordinance requires."

Bowden v. City of Fort Smith, Arkansas, and companion cases at Nos. 280, 314 and 966 October Term, 1941, decided June 8th, 1941, 62 S. Ct. 1231, directly disposes

Argument

of the contention that the imposition of a license fee for the privilege of going from door to door and into the homes of residents of the City of Jeannette to sell books and pamphlets is a violation of the petitioners' rights of freedom of speech, of press and of worship. In these cases, as well as in the cases of *Thornton v. State of Alabama*, 310 U. S. 88, 60 S. Ct. 736, and *Carlson v. People of California*, 310 U. S. 106, 60 S. Ct. 746, this Court recognizes the right and duty of the State to enact laws and regulations to protect the privacy and property of its residents. The right of citizens to be secure in their homes from unwanted intrusion is one that is just as fundamental and just as sacred as the right of freedom of conscience, and speech and press.

It may be appropriate to say here that the ordinance of the City of Jeannette does not exact license fees of the petitioners when they sell on the public streets. They are not only free to use the public streets for this purpose, but members of Jehovah's Witnesses actually do vend their wares in this manner without the payment of any sum whatsoever. It is only when they go from door to door, and into the homes that the terms of the ordinance come into operation. From earliest colonial times, itinerant vendors have been subjected to the payment of a reasonable fee for the privilege of engaging in such business. It is a type of business that can be dangerous to the citizens. Jehovah's Witnesses are no exception.

None of the petitioners in this case are residents of Jeannette. Two of them are not even residents of Pennsylvania (R. 3 and 4). In the cases in which complaint is made in the bill, the solicitors were from many distant towns, both inside and outside of Pennsylvania. The card issued by the Watch Tower Bible and Tract Society affords no protection whatever. These cards are appar-

Argument

ently given almost indiscriminately to anyone who has the cash or credit to obtain books or tracts from a company of Jehovah's Witnesses (R. 42, 52 and 53). In any event, it would scarcely be contended that a New York corporation or a voluntary company of a religious group can supplant responsible governmental officials in the protection of citizens in their homes.

The effect of the ordinance would seem to be to subject persons who would otherwise pay no license for the privilege of doing business within the borough, to the duty of paying something for the privilege, when they undertake to exercise it without incurring the expense of a mercantile license. * * * The peddling of 'other articles' besides market produce, includes everything which may be disposed of by the method called 'hawking and peddling', and we cannot say that this does not include canvassing from house to house and soliciting orders for books."

Warren Borough v. Geer, 117 Pa. 207, 211, 212 (1887).

But it is the manner of sale that makes a peddler. * * * The business of the itinerant vendor is the same in either case, and so is the inconvenience and annoyance he inflicts on others. The merchant or storekeeper is a resident, has a fixed place of business, where his goods are shown to those who come in search of what they need, where he can be reached by process, and compelled to make good his guaranty of the quality of his wares. The peddler is a transient, with no fixed place of business, who seeks customers by invading their homes, and makes sales by persuading people to buy what they do not want, and who, by the time he is wanted to answer for his representation, am

Argument

engagements is out of sight and out of reach of process. * * * Our laws relating to peddling are directed, not against the right of acquisition, but the manner in which he may sell them. Our peddling laws are therefore not in violation of the constitutional rights of the owners of goods, but are a wise exercise of the police power over the manner in which goods, wares, and merchandise shall be sold."

Commonwealth v. Gardner, 133 Pa. 284, 289, 290 (1890).

• In a recent case in which the Superior Court of Pennsylvania was called upon to weigh the conflicting right of citizens to be secure in their homes as against the right of Jehovah's Witnesses to barge into their homes to sell books and tracts, President Judge Keller, speaking for the Court, said:

"This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists, in his home or theirs, and in church, chapel, assembly or other gathering place. But the very clause of the Constitution which protects him in his religious worship, protects others from having his religious tenets and beliefs thrust upon them, against their will, in their homes and offices. Now does the right of free speech justify the unwanted intrusion of the speaker into the homes to give voice to his speech. There is a reasonable limit to the right, and it ends at the door of a home whose residents do not want the speaker to enter; just as its protection is lost by blasphemy, disorderly conduct, libel, slander, etc."

Commonwealth v. Palms, 141 Pa. Super. 430, 15 A. 2d, 481, 485.

Argument

Insofar as the decisions of Pennsylvania are concerned, this case is ruled by the case of *Pittsburgh v. Ruffner*, 134 Pa. Super. 492, 4 A. 2d, 224. Appeal refused by the Supreme Court of Pennsylvania March 17th, 1939, 134 Pa. Super. XXXIII.

Ordinance No. 60 of the City of Jeannette was recently before the Superior Court of Pennsylvania in the case of *Commonwealth of Pennsylvania v. Robert J. Murdock, Jr., et al.*, at Nos. 1 to 8, both inclusive, April Term 1943. The Superior Court, in an opinion filed July 23rd, 1943, again upheld the validity of the ordinance in an opinion by Judge Keller, in which the opinion of this Court in the case of *Bowden et al. v. City of Fort Smith*, *supra*, is quoted extensively. The Supreme Court of Pennsylvania, in that case, denied a certiorari on September 28th, 1942, and a petition for writ of certiorari to the Superior Court of Pennsylvania has been filed in this Court.

The case of *Commonwealth v. Reid*, 144 Pa. Super. 569, 20 A. 2d, 841, which is cited by petitioners as being in conflict with the decision of the Circuit Court, is one that relates solely to the sale of periodicals on the streets. As previously noted, there is no ordinance of the City of Jeannette which requires the payment of a license fee to sell books or periodicals on the public streets, and Jehovah's Witnesses are free to transact their business in this way in the City of Jeannette to their hearts' content.

Such cases as *Hunover Fire Insurance Company v. Harding*, 272 U. S. 494, and *Southern Railway Company v. Greene*, 216 U. S. 400, have no application to the case at bar. The ordinance applies equally to resident and non-resident itinerant solicitors. It makes no distinction between foreign and domestic corporations or between corporations and individuals.

Grosjean v. American Press Company, 297 U. S. 233,

pronounces no such doctrine as the petitioners ascribe to it. On the contrary, it specifically recognizes the right of the State to tax publishing houses and newspaper publishers so long as the tax applies equally to all, and so long as it is not a thinly disguised effort at censorship.

On the question of jurisdiction, the respondents feel strongly that the District Court and the Circuit Court were in error. The Acts of congress under which jurisdiction was sustained^{1 2} gave individuals a right of redress, and gave District Courts a right to entertain actions in law or in equity where constitutional rights are denied under color of a State ordinance or law. The very use of the word "color" involves pretext or disguise. It suggests, window dressing and hypocrisy. To give an indi-

¹ Section 1979 Revised Statutes is as follows:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

² Section 24 (14) of the Judicial Code is as follows:

"The District courts shall have original jurisdiction as follows:

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States or of any right secured by any law of the United States, providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

Argument

vidual a right of action, and to give Federal Courts the right to entertain such an action would involve at least a showing that the ordinance was merely a sham and a subterfuge, and that it was being so employed as to deprive individuals of clear constitutional rights. Certainly, this requirement is not satisfied by a general averment in a pleading that there is want of due process. Any person who seeks to invoke the jurisdiction of the Federal Courts could do so by making such an allegation. Judge Jones, in his dissenting opinion on the question of jurisdiction, clearly and forcefully sets forth the views of the respondents on this question, and it would be presumptuous on the part of counsel to attempt to add to that discussion.

Hague v. Committee for Industrial Relations, 307 U. S. 496, in the opinion of counsel for the respondents, is the guide post that marks the limits of Federal jurisdiction under Section 24 (14) of the Judicial Code, (28 U. S. C. A., Section 41 (14)), of a cause of action under R. S. Section 1979, 8 U. S. C. A., Section 43.

The petitioners, however, have not been harmed by the decision of the District and Circuit Courts on this point, and it affords them no basis for asking for a writ of certiorari.

The respondents respectfully ask that the petition be dismissed.

FRED B. TRESCHER,

Solicitor for the City of Jeannette.



FILE COPY

IN THE
Supreme Court of the United States

October Term, 1942, No. 450

ROBERT L. DOUGLAS, ALBERT R. GUN
DECKER, EARL KALKBRENNER, CARROL
CHRISTOPHER, VICTOR SWANSON, NICHOLAS
KODA, CHARLES SEDERS, ROBERT LAM
BORN and ROBERT MURDOCK, JR.,

Petitioners

vs.

CITY OF JEANNETTE (Pennsylvania), a municipal corporation, and JOHN M. O'CONNELL, individually and as Mayor of City of Jeannette (Pennsylvania),

Respondents

Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

RESPONDENTS' BRIEF

FRED B. TRESCHER,
KUNKLE, TRESCHER & SNYDER,
Attorneys for Respondents.

Irwin Gas Coal Building,
Greensburg, Pa.

INDEX

	PAGE
Counter-Statement of the Case	1
Argument	9
The District Court lacked jurisdiction	10
The jurisdiction of Federal Courts attaches only where there is a tortious invasion of rights under color of an ordinance	15
Ordinance No. 60 is a valid exercise of the sovereign power of the state to tax and place a curb on unbridled solicitation of people in their homes and to protect the residents of the community from fraud	20

CITATIONS

CASES:

Adkins v. Children's Hospital, 261 U. S. 525	18
Commonwealth v. Gardner, 133 Pa. 284	21
Commonwealth v. Hessler, 141 Pa. Super. Ct. 421, 15 A. 2d 486	21
Commonwealth v. Reid, 144 Pa. Super. Ct. 569, 575-6, 20 A. 2d 841	21
Commonwealth v. Stewart, 137 Pa. Super. Ct. 445, 446, 9 A. 2d 179	21
Commonwealth v. Palms, 141 Pa. Super. Ct. 430, 440, 15 A. 2d 481	21
Hague v. Committee for Industrial Organization, 307 U. S. 496, 83 L. Ed. 1423	12, 19

Langhies v. Green, 282 U. S. 531, 538, 539, 75 L. Ed. 520 9

Pittsburgh v. Ruffner, 134 Pa. Super. Ct. 192, A. 251

224

21, 22

Warren v. Geer, 117 Pa. 207

21

STATUTES:

Judicial Code:

28 U.S.C.A. Section 41 (14),

9, 10, 13

18 U.S.C.A. Section 51 and 52

11

Civil Rights Act of 1871:

Section 1979 Revised Statutes, 8 U.S.C.A. Section 43, 10

Criminal Code:

R. S. Sec. 5508; Mar. 4, 1909, C. 321, Sec. 49, 35
Stat. 1092

11

R. S. Sec. 5510; Mar. 4, 1909, C. 321, Sec. 20, 35
Stat. 1092

11

COUNTER STATEMENT OF THE CASE

This action was brought in equity in the District Court of the United States for the Western District of Pennsylvania to restrain the City of Jeannette and its Mayor, John M. O'Connell, from enforcing one of its ordinances.

The ordinance requires persons who canvass for and sell merchandise of any kind from house to house to obtain a license to transact such business.

The District Court granted an injunction. The Circuit Court reversed the District Court. In an opinion by Judge Maris, and concurred in by Judges Biggs and Goodrich, a majority of the Court held that the District Court had jurisdiction of the case, and that, on the authority of *Bowden v. City of Fort Smith* (Arkansas 1942), 62 S. Ct. 1231, 316 U. S. 584, 86 L. Ed. 1691, the ordinance was constitutional.

Judge Jones wrote a dissenting opinion on the question of jurisdiction, taking the position that the District Court lacked jurisdiction in the absence of any averment of fact from which it could be inferred that the complainants were denied due process of law.

The jurisdiction of the District Court to restrain the City of Jeannette from enforcing its ordinance was claimed under the Civil Rights Act of 1871, now Section 1979, Revised Statutes, 8 U.S.C.A. Section 43, which gives to in-

Section 1979 Revised Statutes is as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the depriva-

Counter-Statement of the Case

dividuals a right of action at law or in equity against any person, who, under color of any ordinance, deprives such person of rights, privileges or immunities secured by the Constitution, and under Section 2414 of the Judicial Code, 28 U.S.C.A., Section 4114, which confers upon district courts jurisdiction to entertain actions brought in such case."

The complaint was in most general terms. It contained no specific averments. It set forth that on April 3, 1939, the defendants caused "the arrest of plaintiffs and other persons known as Jehovah's Witnesses, and thereafter maliciously prosecuted plaintiff and others for an alleged violation of a municipal ordinance." * * * (R. 7). It averred that "plaintiffs and others of Jehovah's Witnesses have been arrested and prosecuted for exercising the right of free press, free speech and freedom of worship of Almighty God." * * * (R. 8); that plaintiffs had been "falsely arrested," and "compelled to undergo a mock trial, where they were denied the rights of freedom of speech, of press and of worship." (R. 9); that "plaintiffs have to undergo

tion of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceedings for redress."

"Section 2414 of the Judicial Code is as follows:

"The district courts shall have original jurisdiction as follows:

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage of any State, of any right, privilege or immunity secured by the Constitution of the United States or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

Counter-Statement of the Case

great burden of expense to appeal from their aforesaid wrongful convictions to higher courts; that they are now unable to continue to appeal and provide counsel for future cases threatened by the defendants to be brought against the plaintiffs when exercising their constitutional rights in the manner hereinbefore described" (R. 9).

The answer of Mayor O'Connell and of the City of Jeannette denies that the plaintiffs, or any of them, or any of their cult, had ever been falsely arrested, maliciously prosecuted, or subjected to a mock trial, and asserted on the contrary that they were given a full and fair trial, and convictions passed upon by the Courts of Quarter Sessions of Westmoreland County, the Superior Court of Pennsylvania, the Supreme Court of Pennsylvania, and the Supreme Court of the United States (R. 17 and 18).

The testimony shows that about the middle of March of 1939, after the city officials had made an effort to persuade Jehovah's Witnesses to conform with the licensing requirements of Ordinance No. 60, a few of their number were arrested (R. 28, 29, 59). These cases were appealed to the Court of Quarter Sessions of Westmoreland County. While the appeals were pending, Mr. Hessler, zone servant for Jehovah's Witnesses, made an effort to induce the city officials to withdraw the prosecution, and upon their refusal to do so, he informed the city authorities that he would be back, and come back with more salesmen than the city police force could cope with (R. 100, 129, 130, 132). His defiant threat was made good. On April 2nd, 1939, more than a hundred canvassers appeared in town (R. 130). Their incessant hammering on doors of the homes of the residents resulted in a deluge of phone calls at the police station (R. 100, 101, 130, 131, 132). The demands for relief from the annoyances were so great that the facilities of the Fire Department had to be made available and some of the complaints received there (R. 101,

4
Counter Statement of the Case

130). In many instances, people were called upon two, three and four times by different groups (R. 10).

The complaints disclose that in a number of instances all pretense of religious endeavor was being abandoned by the canvassers, and that they were simply peddling books from door to door in the manner ordinary peddlers employ. (R. 100, 101). In these cases, arrests were made. Charges were filed against twenty-one persons so engaged, and after a full hearing, eighteen of the defendants were convicted (R. 101, 102). There is no suggestion anywhere in the record that they were not afforded a full and fair hearing. None of the defendants even took the stand to deny the testimony offered by the Commonwealth's witnesses (Stewart et al. v. City of Jeannette, No. 722 October Term, 1939 in the Supreme Court of the United States, R. 102).

These cases were appealed to the several Courts of Pennsylvania, and finally reached this Court, where a certiorari was denied (Stewart et al. v. Commonwealth, No. 722 October Term, 1939, 309 U. S. 674 R. 63, 64). After this Court denied a certiorari, the persons arrested, at their own request, were committed to jail in lieu of payment of fine (R. 102). A habeas corpus proceeding was instituted, and the matter was again taken to the Superior Court of Pennsylvania. Ferree vs. Douglas, 145 Pa. Super. 447, 21 A. 2nd 472.

In February of 1940, members of the cult again engaged in selling from door to door without a license. More arrests were made (R. 103). They were each afforded a full hearing and stenographic notes of testimony were taken at the trial (Defendant's Exhibit C, R. 105). Appeals were taken to the Court of Common Pleas of Westmoreland County, Pennsylvania, and at the request of the *defendants*, the decision in the appeal was held in abeyance pend-

Complaint-Statement of the Case

ing a decision in other cases then before the appellate courts (R. 66, 67). These cases ultimately reached the Superior Court of Pennsylvania, and are now before this Court at Nos. 480 to 487, both inclusive, October Term, 1942.

On the occasion of these eight arrests, there were more than a hundred members of Jehovah's Witnesses engaging in unreasonable and unnecessary and annoying solicitation. Here again, only those who were engaged in actual selling from door to door were arrested and charged with violation of the ordinance.

The complaint charged that the petitioners had been put to great expense defending themselves in the various charges brought under the ordinance. The testimony failed to show a single expenditure by any of the complainants. It affirmatively showed, on the contrary, that all legal expenses had been paid by a corporation known as Kingdom Service Company.

Mr. Hessler testified that Kingdom Service Incorporated was maintained by voluntary contributions of a dollar from each of the members (R. 82). It ultimately developed that Kingdom Service Incorporated derived its income largely from payments made by the several companies through which the Watch Tower Bible and Tract Society sold its books (R. 106, 107, 108).

There was some pretense that Kingdom Service Company maintained a school (R. 82), but when the books and records were produced, they showed a comparatively small part of the income of the corporation devoted to school work (R. 109, 110, 111 and 112).

The testimony in chief showed that full time ministers, like Mr. Hessler, obtained books from the Watch Tower Bible and Tract Society for the sum of five cents and sold them for twenty-five cents (R. 75, 76). The testimony in

Counter-Statement of the Case

chief further showed that the several companies of Jehovah's Witnesses purchased books from the Watch Tower Bible and Tract Society for twenty cents and sold them to individual members at the same price (R. 75).

Counsel for the respondents insisted upon the production of records. The petitioners were reluctant to produce records (R. 82, 83, 84). Finally the records for the Central Unit, Pittsburgh Company of Jehovah's Witnesses, were produced. They showed the purchase of literature and books from the Watch Tower Bible and Tract Society, 117 Adams Street, Brooklyn, New York, and World Syndicate Publishing Company, Cleveland, Ohio. Typical examples of what the books showed from the purchase and sale of literature during the year 1940 were for the month of

August \$284.84 received and \$117.64 paid out

September \$474.08 received and \$275.85 paid out

October \$479.29 received and \$287.50 paid out

(R. 117)

Mr. Stewart, who produced the books, insisted that the monthly balance was carried forward each month so that the books did not show actual income and expenditures. They did show substantial payments each month for such items as rent, telephone service and sales expense (R. 118, 119, 120, 121). Mr. Stewart finally attempted to explain the wide difference between receipts and expenditures by saying that the company was indebted to the Watch Tower Bible and Tract Society in the amount of \$1,300 for books. The item, however, was not shown on his books (R. 125).

The numerous different companies through and under which Jehovah's Witnesses operated made it impossible to trace the source of their funds or the purpose for which expenditures were made. Kingdom Service paid out large sums of money each month for what purported to be legal

7

Counter-Statement of the Case

expenses (R. 108 to 111). Of the sums alleged to have been paid out by virtue of litigation involving ordinance No. 60, of the City of Jeannette, at least \$400 was paid out in connection with the equity suit presently before the Court (R. 111):

Only one of the plaintiffs testified. It was not shown that he, or any of the plaintiffs, were in any way associated with or made contributions to Kingdom Service or any of the numerous companies which comprise Jehovah's Witnesses.

There was thus no suggestion anywhere that the small daily or weekly fee or tax imposed by ordinance No. 60 for the privilege of selling books from door to door in the City of Jeannette would be a burden on these plaintiffs, or any of their associates, or on any of their companies. On the contrary, it affirmatively appeared that there were ample funds available out of which the tax might have been paid (R. 108, 109, 110, 117, 118, 119, 120, 127).

An effort was made to show that a company of Jehovah's Witnesses at one time existed in the City of Jeannette, and that it was compelled to disband because of the arrests (R. 40, 41). The testimony about a Jeannette company was purely hearsay (R. 56). Again when records were insisted upon, it became apparent that no Jeannette Company ever existed (R. 71, 72), and if such company ever did exist, it was prior to any of the arrests concerning which testimony was given at the trial (R. 114, 115).

The record further shows that members of Jehovah's Witnesses are perfectly free to sell their books and other publications on the public streets (R. 97), and that when they did nothing more than to go from door to door presenting a card soliciting contributions, they were not molested (R. 93). It was only where the individuals were

Counter-Statement of the Case

going from door to door, into the houses, and selling that prosecutions were instituted.

The records in the case of *Stewart et al. v. City of Jeannette*, and the records now before this Court in *Murdock et al. v. City of Jeannette* show that the transactions there involved can be branded nothing more nor less than commercial. Both these records were offered as Exhibits in this case (Exhibit C, R. 103, 101, 102, 105—Exhibit A, R. 63, 64).

Argument

ARGUMENT

There is involved in this case, not only the constitutionality of Ordinance No. 60, but also the very important question whether the Federal Courts have jurisdiction under Section 2414 of the Judicial Code, 28 USCA, Section 41 (14), in the absence of any averment or proof that the petitioners were denied due process of law.

The contention of counsel for the petitioners that the respondents are not at liberty to press the latter question because a majority of the Circuit Court held that the District Court had jurisdiction, is very effectively disposed of in one of the cases cited in petitioners' brief.

"It is true that a party who does not appeal from a final decree of the trial court cannot be heard in opposition thereto when the case is brought here by the appeal of the adverse party. In other words, the appellee may not attack the decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary, whether what he seeks is to correct an error or to supplement the decree with respect to a matter not dealt with below. But it is likewise settled that the appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it."

Langues v. Green, 282 U. S. 531, 538, 539, 75 L. Ed. 520.

*Argument***THE DISTRICT COURT LACKED JURISDICTION**

Section 2414 of the Judicial Code, 28 USCA, Section 41 (14), gives District Courts original jurisdiction "of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage, of any State, or any right, privilege or immunity, secured by the Constitution of the United States or of any right secured by any law of the United States, providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States:"

The Civil Rights Act of 1871, now Section 1979 Revised Statutes, 8 USCA, Section 43, confers a right of action at law or in equity upon persons who have been deprived "of any right, privilege or immunity secured by the Constitution and laws", under color of any ordinance, law or statute.

Paragraph one of the complaint avers that "Jurisdiction of this suit is based upon existence of a 'federal question' irrespective of the amount of money involved, in that this action arises under the Constitution and laws of the United States and involves purely and solely 'civil rights' under and by virtue of the Civil Rights Act of 1871 and Section 24 (14) of the Judicial Code otherwise known as 28 U. S. C. A. 41 (14), which confers jurisdiction upon United States District Courts to entertain suits for injunction to redress the deprivation of 'civil rights' by persons acting under color of ordinance, law or statute of a state." (R. 3)

Paragraph 14 of the complaint avers that the "conduct and threatened conduct of the defendants against plaintiffs and other Jehovah's witnesses constitute viola-

Argument

tion of plaintiffs' civil rights contrary to Federal statutes, 18 U. S. C. A., sections 51 and 52, and also violation of the 'Civil Rights Act of 1871' in that the defendants concerned under color of law and in a conspiracy to deprive Jehovah's Witnesses of their constitutional rights of freedom of speech, of press, of assembly, and freedom to worship Almighty God, by unlawfully arresting and falsely charging and wrongfully threatening to arrest and charge the said Jehovah's witnesses with a violation of the above described ordinance of aforesaid Pennsylvania municipality." (R. 19)

These sections are portions of the Criminal Code (R. S. Sec. 5508; Mar. 4, 1909, C. 321, Sec. 19, 35 Stat. 1092, and R. S. Sec. 5510; Mar. 4, 1909, C. 321, Sec. 20, 35 Stat. 1092). The former makes it a criminal offense, punishable by heavy fine and imprisonment, for two or more persons to conspire to oppress or intimidate any citizen in the free exercise of any right or privilege secured to him by the Constitution, or for two or more persons to go in disguise upon the highways with intent to prevent or hinder the free exercise or enjoyment of any rights secured by the Constitution. The latter makes it a criminal offense for anyone under color of any law or ordinance to deprive any inhabitant of any rights secured by the constitution or to subject any inhabitant to different pains or punishments by reason of alienage or by reason of color or race than are prescribed for the punishment of other citizens.

The averments contained in Paragraph 14 of the complaint cannot possibly be construed as conferring upon Federal Courts any jurisdiction in a civil action such as the one now before the Court.

The pleadings contain numerous conclusions to the effect that the defendants "did unlawfully cause the arrest of the plaintiffs" and "thereafter maliciously prosecuted

Argument.

plaintiffs", and "that after being falsely arrested they have been compelled to undergo a mock trial where they were denied rights of freedom of speech, of press and of worship by the defendants."

The complaint avers that the plaintiffs "have to undergo a great burden of expense to appeal from their said wrongful convictions to higher courts," and "that they are now unable to continue to appeal and to provide counsel for future cases threatened by the defendants * * *" (R. 7 and 9)

There is not a single averment of fact anywhere in the bill of complaint which would justify an inference that the petitioners, or any of them, were denied due process. There is no suggestion that any of their appeals to higher tribunals were sustained. The complaint itself shows an ordinance entirely regular on its face. It is the common type of peddlers' ordinance requiring registration and license of all who sell books and merchandise from house to house.

There is no intimation of discrimination or of absolute prohibition of peddling or canvassing or of censorship, or of oppressive fee.

The bill of complaint shows that the petitioners had full and free access to the courts and ample opportunity to resort to the ordinary processes of law to correct any injustice, procedural or otherwise.

An examination of the several averments of the petitioners' complaint demonstrates that they were attempting to bring the action within the decision of this Court in *Hague v. Committee for Industrial Organization*, 307 U. S. 496, 83 L. Ed. 1423, and that backing facts upon which their complaint might be based, averred conclusions instead.

The majority opinions of the Supreme Court in the

Argument

Hague case hold, that jurisdiction to entertain a suit to enjoin the enforcement of a municipal ordinance under color of which individual plaintiffs have been denied the right to hold lawful meetings is conferred upon the Federal District Court by the provisions of Section 24 (14) of the Judicial Code, 28 U. S. C. A. Sec. 41 (14), only under certain circumstances.

The opinion of Mr. Justice Roberts, which is concurred in on this point by a majority of the members who took part in the decision, says:

"The question now presented is whether freedom to disseminate information concerning the provisions of the National Labor Relations Act, to assemble peaceably for discussion of the act, and of the opportunities and advantages offered by it, is a privilege or immunity of a citizen of the United States secured against state abridgment by Section 1 of the Fourteenth Amendment and whether Rev. Stat. Sec. 1979 and Sec. 24 (14) of the Judicial Code 28 U. S. C. A. Sec. 41 (14) afford redress in a federal court for such abridgment. * * * Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation, and the benefits, advantages and opportunities to accrue to citizens therefrom. All of the respondents' proscribed activities, had this single end and aim. The District Court had jurisdiction under Sec. 24 (14)."

(L. Ed. pages 1435 and 1436, U. S. pages 512 and 513).

The opinion of Mr. Justice Roberts, concurred in by Mr. Justice Black, and the opinion of Mr. Justice Stone, concurred in, in part, by Mr. Chief Justice Hughes, make it clear that the jurisdiction of the District Court was sus-

Argument

limited only because national legislation, whose constitutionality had been sustained by the Supreme Court, was the subject with which the municipality, under the guise of enforcing its ordinance, was attempting to interfere. Mr. Justice Stone, now the Chief Justice, in a footnote to his opinion on *SAY*:

The privileges and immunities of citizens of the United States, it was pointed out, are confined to that limited class of interests growing out of the relationship between the citizen and the national government created by the Constitution and Federal laws. *Slaughter-House Cases*, 16 Wall. 36, 79, 24 L. Ed. 394, 409, see *Stromberg v. New Jersey*, 211 U. S. 78, 97, 98, 53 L. Ed. 97, 105, 106, 20 S. Ct. 14.

That limitation upon the operation of the privileges and immunities clause has not been relaxed by any later decisions of this Court. Upon that ground appeals to this Court to extend the clause beyond the limitation have uniformly been rejected, and even those basic privileges and immunities secured against federal infringement by the first eight amendments have uniformly been held not to be protected from state action by the privileges and immunities clause.

The reason for this narrow construction of the clause and the consistently exhibited reluctance of this Court to enlarge its scope has been well understood since the decision of the *Slaughter-House Cases*. If its restraint upon state action were to be extended more than is needed to protect relationships between the citizen and the national government, and if it were to be deemed to extend to those fundamental rights of person and property attached to citizenship by the common law and enactments of the states when the

Argument

Amendment was adopted, such as were described in *Corfield v. Corvell*, supra, it would enlarge Congressional and judicial control of the State action and multiply restrictions upon it whose nature, though difficult to anticipate with precision, would be of sufficient gravity to cause serious apprehension for the rightful independence of local government. That was the issue fought out in the Slaughter-House Cases, with the decision against enlargement."

In the case at bar there is no pretense in either the pleadings or the proofs that the petitioners or any members of Jehovah's Witnesses were selling or distributing literature which in any manner discussed the relationship of citizens of the United States to the national government.

THE JURISDICTION OF FEDERAL COURTS ATTACHES ONLY WHERE THERE IS A TORTIOUS INVASION OF RIGHTS UNDER COLOR OF AN ORDINANCE

The opinion of Mr. Justice Roberts continues by pointing out that only natural persons are within the protection of Section 4 of the fourteenth amendment, and by reciting the numerous instances in which citizens of the United States were denied, under the guise of regulation, fundamental rights guaranteed them under the fourteenth amendment.

An ordinance which placed unlimited discretion in the Director of Public Safety of Jersey City to refuse permits to hold public meetings was held to be void on its face. It was the city's duty to prevent riots. The court said uncontrolled official suppression of the privilege of assem-

Argument.

blage could not be made a substitute for the city's duty to maintain law and order. The instances of unreasonable searches, unlawful arrests and denials of public hearings and trials for supposed violations of city ordinances were numerous. The citizens were frequently picked up bodily and carried by the police beyond the city limits.

In substance, the plaintiffs in that case were deprived of the ordinary processes of law to either assert or to test their rights. On this latter point, the Circuit Court of the United States for the Third Circuit, in its decision of the case, very aptly said:

"The appellants contend that the appellees have a full and adequate remedy at law and that therefore the causes of action set up in the bill of complaint are not cognizable in equity. In our opinion this contention cannot be sustained, the record clearly shows a shocking and constant disregard of the basic civil rights of the appellees by the appellants. These acts were torts and their threatened continuance is sufficient ground for the equitable relief sought and granted."

(101 Federal 2d, pages 790 and 791).

Judge Jones, of the Circuit Court, in his dissent from the reasoning of the majority of the Court in this case, makes the following significant statement:

"As I read the opinion of Justice Stone in the Hague case, it seems implicit that a showing of a want of due process is essential to an invocation of the jurisdiction under Sec. 24 (14) of an action under R. S. Sec. 1979 for the redress of the deprivation of a right secured by the due process clause of the Fourteenth Amendment. The bill of complaint in the Hague case, whereby the jurisdiction was to be adjudged, fairly

Argument

bristled with allegations of fact showing an arbitrary, discriminatory and even violent deprivation of the complainants' freedom of speech, press and assembly, all done by municipal officers of Jersey City under color of enforcing a city ordinance. Certainly, Justice Stone's opinion in the Hague case provides no implication that all that is necessary to jurisdiction under Sec. 24 (14) to redress an alleged deprivation of liberty is an allegation that the defendants are acting contrary to the Fourteenth Amendment. If that were so, then the case involving a local ordinance or state statute that could not be taken directly to a District Court for attempted invalidation would, indeed, be difficult to imagine, for the security of the due process clause extends also to life and property. The necessary consequence would be an unwarranted extension of federal jurisdiction over local matters. Yet, a 'serious apprehension for the rightful independence of local government' was a reason ascribed by Justice Stone for his dissent from the majority's extension of 'privileges or immunities' in *Colgate v. Harvey*, 296 U. S. 404, 436, 445, which, incidentally, was later expressly overruled in *Madden v. Kentucky*, 309 U. S. 83, 93. A like apprehension suggests no less than, where an ordinance does not, on its face or as administered, deprive of life, liberty or property either arbitrarily, discriminatorily, or capriciously, and there has been no denial of procedural due process, the interpretation of the ordinance and the manner of its administration should, in the first instance, be left to the courts of the state.⁵

⁵ *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496, 499-500; *Thompson v. Magnolia Co.*, 309 U. S. 478, 484; *Lindsey v. Washington*, 301 U. S. 397, 400; *Bevins v. Prindable*, 39 F. Supp. 708, 713 (E. D.

Argument

The opinion of Justice Roberts in the Hague case cannot be said to furnish the plaintiffs any support for federal jurisdiction under the averments of their bill. The right of action under R. S. Sec. 1979, which Justice Roberts perceived under the bill in the Hague case, was for the redress of state abridgment of the complainants' privileges and immunities as citizens, contrary to the Fourteenth Amendment. What it is necessary to aver in order to plead jurisdiction of a case under the due process clause of the Fourteenth Amendment, was, therefore, neither germane nor considered. A want of due process is not a condition of the security against state abridgment which the Fourteenth Amendment gives to citizens in respect of their privileges and immunities. Moreover, even though the present plaintiffs are citizens, the redress which they seek is not for the abridgment of privileges or immunities attending their national citizenship. The rights which they assert are attributes of the liberty, incident to all persons subject to the jurisdiction of the United States regardless of their citizenship."

(R. 165, 166, 167)

Judge Maris, in his opinion on the question of jurisdiction, in which a majority of the court below concurred, quotes a paragraph from the brief of Mr. Justice Frankfurter, when he was counsel for the appellants in the case of *Adkins v. Children's Hospital*, 261 U. S. 525, 530, 531. It is cited in support of the proposition that the only thing needed to give Federal Courts jurisdiction under Section 24 (14) of the Judicial Code is an averment of want of due process of law. Counsel for the respondents respect-

Ill.), a three judge court, where Jehovah's Witnesses assailed an Illinois statute as invalid under the Fourteenth Amendment.

Argument

fully submit that the carefully chosen language used there gives no support to such a proposition. On the contrary, it shows the need for averments of fact from which it could be deduced that the challenged state action resulted in wanton or arbitrary interference or spoliation of property. A portion of the language quoted is as follows:

"A careful study of the long line of cases, especially dealing with the 'due process' clause, beginning with the Slaughter-House Cases, 16 Wall. 36, shows two dominant ideas conceived to be fundamental principles: (1) Freedom from arbitrary or wanton interference, and (2) protection against spoliation of property. 'Arbitrary', 'wanton' and 'spoliation' are the words which are the motif of the decisions under the 'due process' clauses. That is as close as we can get to it; it is close enough when dealing with the great questions of government. What it means is that the Fourteenth Amendment intended to leave the States the free place necessary for effective dealing with the constant shift of governmental problems, and not to hamper the States except where it would be obvious to disinterested men that the action was arbitrary and wanton, and therefore spoliative and unjustified."

(R. 158)

Never to be overlooked in this case is the important requirement that to give federal jurisdiction there must be some showing that the individuals sought to exercise their right in association with some one or more of the powers specifically granted to the Federal Government.

As counsel for the respondents read the opinion of this Court in *Hague v. C. I. O., supra*, it was only because the petitioners were seeking to meet together and discuss or distribute literature bearing on the National Labor Re-

Argument

lations Act that it was held that the District Court in that case had jurisdiction. The States, no less than the Federal Government, are the protectors of individual liberties. Both State and Federal Governments are forbidden to arbitrarily interfere with individual rights.

Any case of alleged deprivation of individual rights guaranteed by the Constitution can ultimately reach this Court after having been passed on by the highest tribunals of the State authorized to determine the question involved. It is only where the claimed right is associated with the powers of the Federal Government that jurisdiction arises under Section 24 (14). For example, if these complainants, in the exercise of their right of free speech and press and worship, were attempting to transport their religious literature in interstate commerce, and the respondents, under color of some ordinance, were attempting to arbitrarily deprive them or interfere with such transportation, then a case under Section 24 (14) would be made out.

There is not only an absence of any averment of fact from which the Court would be justified in inferring a want of due process but an absence of any averment that the petitioners were exercising their claimed rights in connection with any of the powers or duties of the national government. The District Court lacked jurisdiction.

ORDINANCE NO. 60 IS A VALID EXERCISE OF THE SOVEREIGN POWER OF THE STATE TO TAX AND TO PLACE A CURB ON UNBRIDLED SOLICITATION OF PEOPLE IN THEIR HOMES AND TO PROTECT THE RESIDENTS OF THE COMMUNITY FROM FRAUD

This question is discussed at length on behalf of the respondents in the cases of *Murdock et al. v. City of Jean*

Argument

ette, at Nos. 480 to 487 October Term, 1942, and that discussion will not be repeated here.

There are, however, some things in the record in this case which emphasize the need for protection of the right of privacy, and the right of citizens to be secure in their homes, from undue and unwanted solicitation.

In the *Murdock* case, counsel pointed out that ordinances of the type now under consideration have long been upheld in Pennsylvania as an exercise of the police power and of the taxing power of the State. In the earlier cases, such ordinances were attacked on the ground that they were a deprivation of property and a restraint on the individual's right to pursue a lawful calling.¹ In more recent cases, it has been contended that freedom of press, of worship, and of speech was abridged.²

In one of the earlier cases, the Supreme Court of Pennsylvania said:

"Our laws relating to peddling are directed, not against the right of acquisition, but the manner in which some people exercise that right; not to the right of an owner to sell his goods, but to the manner in which he may sell them. Our peddling laws are therefore not in violation of the constitutional rights of the owners of goods, but are a wise exercise of the police power over the manner in which goods, wares, and merchandise shall be sold."

Commonwealth v. Gardner, 133 Pa. 284, 290 (1890)

¹ *Warren v. Geer*, 117 Pa. 207, 211, 212; *Commonwealth v. Gardner*, 133 Pa. 284, 289, 290.

² See *Com. v. Stewart*, 137 Pa. Superior Ct. 445, 446, 9 A. 2d 179; *Com. v. Palmis*, 141 Pa. Superior Ct. 430, 440, 15 A. 2d 481; *Com. v. Hessler*, 141 Pa. Superior Ct. 421, 15 A. 2d 486; *Com. v. Reid*, 144 Pa. Superior Ct. 569, 375-6, 20 A. 2d 841; *Pittsburgh v. Ruffner*, 134 Pa. Superior Ct. 192, 4 A. 2d 224.

Argument

In one of the later cases, the Superior Court of Pennsylvania said:

"But the very clause of the Constitution which protects him in his religious worship, protects others from having his religious tenets and beliefs thrust upon them, against their will, in their homes and offices. Furthermore, the constitutional guaranty of freedom of religious worship furnishes no ground for striking down a reasonable and salutary ordinance designed to protect people in their homes and offices from being victimized by unscrupulous and unauthorized agents. In fact, this ordinance protects duly authorized agents of the organization alleged to be sponsoring the appellant from the acts of unauthorized and unscrupulous persons who may falsely pretend to be its representatives. The constitutional right of freedom of worship does not guarantee anybody the right to sell anything from house to house or in buildings belonging to, or in the occupancy of, other persons."

City of Pittsburgh v. Ruffner, 134 Pa. Superior Ct. 192, 4 A. 2d 224, 227 (1939).

The record in this case shows that the cards signed by J. O. Rutherford and certifying that the bearer is a minister of Jehovah's Witnesses are loosely handled and may be obtained by anyone. It shows that virtually no control is exercised over the persons who solicit the homes. The several solicitors did not know the names of their superiors, and there is nothing to indicate that the superiors knew the names of the solicitors, or their addresses. In the one instance, in which a list of names was furnished, there is nothing to show that it was accurate or that it contained addresses. The alleged ministers were from many different communities of Western Pennsylvania.

Argument.

Ohio and West Virginia. They may have been high-minded citizens but they may also have been evilly disposed.

The solicitation was entirely outside the realm of reason. Residents of the community were frequently called upon two, three and four times a day to hear their religions and their churches denounced as a snare and a racket.

The purpose of Jehovah's Witnesses was not that of reasonably carrying messages of religion into the homes, but to harass and annoy the residents and embarrass the city authorities, and to force a withdrawal of the cases which were then pending before the Courts for decision.

The ordinance was not attacked on the ground that the fee imposed placed an unreasonable burden or a substantial clog on the activities of Jehovah's Witnesses. It was assailed, and Jehovah's Witnesses refused to comply with it, because, they said, it was a matter of conscience. Nevertheless, there is enough in the record to demonstrate beyond any question that the fees prescribed by the ordinance would not have interfered with or operated as a substantial clog on any reasonable solicitation which the members wished to make in the City of Jeannette.

The differential between the cost and sale price of books is ample to permit the payment of such fees. In fact, the payment of license fees prescribed by the Jeannette ordinance, and in other localities, would be very substantially less than the amounts now paid out monthly by such organizations as Kingdom Service for legal services.

If the petitioners feel impelled to sell their books from door to door in the City of Jeannette they are at perfect liberty to do so by paying the modest fee prescribed in the ordinance. The tax imposed would do nothing more than compel them to be moderate in their efforts. If they de-

Argument

cline to pay the fee, as prescribed, there are still many other methods of circulation and distribution open to them. Solicitation by mail immediately suggests itself. The streets are available to Jehovah's Witnesses at all times for the purpose of selling their literature, and no license fee is required. People may be assembled together at a place of meeting and the salesmen can peddle their books to their hearts' content without paying anything.

As noted in the *Murdock* case, the City of Jeannette maintains a public auditorium, and this, too, as a place of meeting, is available at no cost, provided some resident of the City requests its use.

There is thus no effort to hamper the religious freedom of the speech or press activities of the petitioners.

Mr. Justice Murphy, in his dissenting opinion, in the case of *Bowden et al. v. The City of Fort Smith*, 314 October Term, 1941, in which the Chief Justice, Mr. Justice Black, and Mr. Justice Douglas concur, makes the following statement:

"Since in any form of action there is a possibility of collision with the rights of others, there can be no doubt that this freedom to act is not absolute but qualified, being subject to regulation in the public interest which does not unduly infringe the right. However, there is no assertion here that the ordinances were regulatory, but if there were such a claim, they still should not be sustained. No abuses justifying regulation are advanced and the ordinances are not narrowly and precisely drawn to deal with actual, or even hypothetical evils, while at the same time preserving the substance of the right."

It is respectfully submitted that the decision of the Supreme Court of Pennsylvania, hereinbefore cited, showed

Argument

a recognition by that Court for many years that the method or manner of selling books and merchandise of any kind from door to door is one that is fraught with peril to the citizens, and thus a proper subject of taxation and regulation, and further that the record in this case shows the excesses to which Jehovah's Witnesses will intrude upon the right of privacy and the right of citizens to be protected in their homes unless a restraining influence in the form of a modest tax is applied.

FRED B. TRESCHER,

KUNKLE, TRESCHER & SNYDER,

Attorneys for Respondents.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 450

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEIDERS, ROBERT LAMBORN and ROBERT
MURDOCK, Jr.
Petitioners

v.

CITY OF JEANETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually and
as Mayor of City of Jeannette, (Pennsylvania)
Respondents

ON CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE THIRD CIRCUIT

Petitioners'
MOTION FOR REHEARING

HAYDEN C. COVINGTON
Attorney for Petitioners

INDEX

SUBJECT INDEX

	PAGE
Caption	<i>Front Cover</i>
THIS INDEX	i-viii
Petitioners' MOTION FOR REHEARING	1
Grounds	2
Supporting ARGUMENT	3-31
Certificate of Petitioners' Attorney	31

CASES CITED

Adams v. Tanner	
244 U. S. 590	19
Aetna Life Insurance Co. v. Haworth	
300 U. S. 227, 240	4
Allen v. Regents of U. System of Georgia	
304 U. S. 439	11
American Life Ins. Co. v. Stewart	
300 U. S. 203, 214-216	25, 27
Ashwander v. Tenn. Valley Authority	
297 U. S. 288	11
Atlas Insurance Co. v. Southern Inc.	
306 U. S. 563, 569	27
Barnette v. West Virginia State B'd of Educ'n	
47 F. Supp. 251	18, 21
Beal v. Missouri Pac. Ry. Co.	
312 U. S. 45	14
Beeler v. Smith et al.	
40 F. Supp. 139	18

CASES CITED

	PAGE
Bemis Bros. Bag Co. v. Feidelson	
13 F. Supp. 153	7
Black v. Little	
8 F. Supp. 867	6
Borchert v. Ranger et al.	
42 F. Supp. 577	18, 21
Bowie v. Gonzales	
117 F. 2d 11	11
Bransford, Ex parte	
310 U. S. 354, 361	19
Cantwell v. Connecticut	
310 U. S. 296	18
Cincinnati v. Cincinnati & H. Traction Co.	
245 U. S. 446	3
Citizens Bank v. Cannon	
164 U. S. 319	30
Cline v. Frink Dairy Co.	
274 U. S. 445	17, 19, 28
Colorado v. Toll	
268 U. S. 228, 230	19, 21
Colorado Nat'l Bank of Denver v. Bedford	
310 U. S. 41	11
Commodity Credit Corp. v. County of Oklahoma	
36 F. Supp. 694	11
Concordia Fire Ins. Co. v. Illinois	
292 U. S. 535, 545	21
Consolidation Coal Co. v. Martin	
113 F. 2d 813	11
Currin v. Wallace	
306 U. S. 1, 95 F. 2d 856	7, 11
Curry v. McCanless	
307 U. S. 357	10
Daines v. Board of Public Works	
91 U. S. 380	3

CASES CITED

	PAGE
Dallas v. City of Atlantic City (unreported)	
USDC-NJ, injunction granted October 11, 1940	18
Dartmouth Woolen Mills v. Myers	
15 F. Supp. 751	7
Dearborn Publishing Co. v. Fitzgerald	
271 F. 479	17, 20
Denver v. Denver Union Water Co.	
246 U. S. 178	3
DiGiovanni v. Camden Fire Ins. Assn.	
296 U. S. 64, 69	27
Dobbins v. Los Angeles	
195 U. S. 233, 241	19
Donley v. City of Colorado Springs	
40 F. Supp. 15	18
Dorchy v. Kansas	
264 U. S. 286	3
Electric Bond & Share Co. v. S. E. C.	
303 U. S. 419	11
Fidelity & Deposit Co. v. Tafoya	
270 U. S. 426, 434	19, 23
Fosgate v. Kirkland	
19 F. Supp. 152	5, 11
Fresno County v. Commodity Credit Corp.	
112 F. 2d 639	11
Gebelein, John A., Inc. v. Melbourne	
12 F. Supp. 105	11
Great Lakes Dredge & Dock Co. v. Charlet	
No. 849, October Term 1942	30
Green v. Louisville & I. Ry. Co.	
244 U. S. 499, 506-508, 520-521	19, 21
Grosjean v. American Press Co.	
297 U. S. 233	19
Group Health Ass'n v. Moor,	
24 F. Supp. 445	11

CASES CITED.

	PAGE
Gulley v. Interstate Natural Gas Co.	
292 U. S. 16	3
Gulley v. Interstate Natural Gas Co.	
82 F. 2d 145, 149	5, 11
Hague v. C. I. O.	
101 F. 2d 774, 307 U. S. 496	14, 16, 19, 24
Harr v. Pioneer Mechanical Corp	
65 F. 2d 332, 335	5
Imperial Irr. Dist. v. Nevada-Calif. Elec. Corp.	
111 F. 2d 319	6
Jamison v. Texas	
318 U. S., 63 S. Ct. 699	30
Johnson v. Deerfield	
25 F. Supp. 918	10
Johnson v. Wells Fargo	
239 U. S. 234	20
Kennedy v. City of Moscow (Idaho)	
39 F. Supp. 26	18
Kennington v. Palmer	
255 U. S. 100	19
Lee v. Bicknell	
292 U. S. 415	23
Lovell v. Griffin	
303 U. S. 444	18
Ludwig v. Western Union	
216 U. S. 146	19
Lukens Steel Co. v. Perkins	
107 F. 2d 627	6
Lynch v. Muskogee (Okla.)	
47 F. Supp. 589	21
Mayo v. Lakeland Highland Canning Co.	
309 U. S. 310	3
Mickey v. City of Excelsior Springs (unreported)	
USDC-SD-Mo., injunction granted January 9, 1941	18

CASES CITED

	PAGE
Minnesota v. National Tea Co.	
309 U. S. 551	3
Montejano v. Rayner	
33 F. Supp. 435	6, 10
Moore v. Fidelity & Deposit Co.	
272 U. S. 317	19
Morgan v. Daniels	
153 U. S. 120	29
Nashville C. & St. L. Ry. Co. v. McConnell	
82 F. 65, 70	17, 20
Nashville C. & St. L. Ry. Co. v. Wallace	
288 U. S. 249	4, 5
New Hampshire Gas & Elec. Co. v. Morse	
42 F. 2d 90-93	26
Oney v. Oklahoma City	
120 F. 2d 861	18, 21
Osborn v. Bank of the United States	
9 Wheat. 738	11
Pan American Petroleum Co. v. Chase Nat'l Bank	
83 F. 2d 447	6
Patterson v. Alabama	
294 U. S. 600	4
Patterson v. Mobile Gas Co.	
271 U. S. 131	3, 4
Penn v. Glenn	
10 F. Supp. 483	6, 11
Petroleum Exploration Int. v. Pub. Serv. Comm.	
304 U. S. 209	24, 25, 27
Pierce v. Society of Sisters	
268 U. S. 510, 535-536	13, 19, 28, 30
Poindexter v. Greenhow	
114 U. S. 270	11
Publix Cleaners v. Florida Dry Cl. & L'dry B'd	
32 F. Supp. 31	7, 10

CASES CITED

	PAGE
Railroad & Whouse Comm. v. Duluth St. Ry.	
273 U. S. 625, 628	25
Reid v. Borough of Brookville (Pa.)	
39 F. Supp. 30	18
Risty v. Chicago RI&P Ry. Co.	
270 U. S. 378; 388	25, 27
Roberts v. City of Hot Springs (unreported)	
USDC-WD-Ark., injunction granted May 8, 1941 ..	18
Roe v. City of North Little Rock (unreported)	
USDC-ED-Ark., injunction granted	
January 27, 1941	18
Rogers v. United States	
141 U. S. 548	29
Roloff v. Purdue	
31 F. Supp. 739, 33 F. Supp. 513	7, 11
Sancho v. Humacao Shipping Corp.	
108 F. 2d 157	11
Santa Fe County v. New Mexico	
215 U. S. 296	4
Schneider v. Irvington (N. J.)	
308 U. S. 147	18
Smyth v. Ames	
169 U. S. 466, 516, 517	25
Southern Pacific Co. v. Conway	
115 F. 2d 746	10, 11
Spielman Motor Co. v. Dodge	
295 U. S. 95	14, 15
Starr v. Sehrum	
24 F. Supp. 888	10
Stephenson v. Equitable Life Assurance Soc.	
92 F. 2d 406, 408	6
Sterling v. Constantin	
287 U. S. 378, 393, 403-404	19, 21, 22

CASES CITED

PAGE

Stratton v. St. L. & S. W. Ry. Co.	
284 U. S. 530, 534	25
Swift & Co. v. United States	
276 U. S. 311	19
Terrace v. Thompson	
263 U. S. 197	19, 24, 25
Texas v. Anderson, Clayton & Co.	
92 F. 2d 104	10
Texas v. Florida	
306 U. S. 398	5, 11
Thompson v. Louisiana	
98 F. 2d 109	11
Truax v. Raich	
239 U. S. 33, 219 F. 273	19
United States v. De Morant	
124 U. S. 647	4
United States v. Query	
37 F. Supp. 972	11
United States v. Rio Grande Dam & Irrig. Co.	
184 U. S. 416	3
United States v. Standard Oil Co.	
21 F. Supp. 645	10
United States v. West Virginia	
295 U. S. 463	11
Vicksburg Waterworks v. Vicksburg	
185 U. S. 65, 82	19
Vögt & Sons v. Rothensies	
11 F. Supp. 225	6
Wallace v. Hudson-Duncan & Co.	
98 F. 2d 985	11
Watts W. & Co. v. Unione Austriaca de Navigazione	
248 U. S. 9	3
Western Union Tel. Co. v. Andrews	
216 U. S. 165	19

CASES CITED

PAGE

Widle v. City of Harrison (unreported)	
USDC-WD-Ark., injunction granted	
January 9, 1941	18
Work v. Louisiana	
269 U. S. 250, 254	19
Wright v. Central Kentucky Nat. Gas Co.	
207 U. S. 537	10
Young, Ex parte	
209 U. S. 123	11, 19
Zimmermann v. Village of London (Ohio)	
38 F. Supp. 582	18

STATUTES CITED

Federal Declaratory Judgment Act	4, 7,
Judicial Code, United States	
Section 24(14)	4, 14, 16, 23
Section 274(d)	2, 3
United States Code	
Title 28, section 41(14)	4, 14, 16, 23
Title 28, Sec. 400	2, 3
United States Code Annotated	
Title 8, Section 43	13

MISCELLANEOUS CITATIONS.

Borchard, <i>Declaratory Judgments</i>	
Second Edition, 1941	5, 7-10, 11
Report of House Committee on the Judiciary	
73rd Congress, 2d Sess. Report No. 1264	11
United States District Court, Rules of, Rule No. 57 ..	7
University of Chicago, Law School Conferences on	
Public Law, June 12-13, 1939, p. 38	9
Yankwich (USDJ), <i>Declaratory Judgments Under</i>	
<i>the New Rules of Civil Procedure</i> , an address before	
Judicial Conference 9th Circuit, July 5-8, 1940	6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 450

■

**ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEDERS, ROBERT LAMBORN and ROBERT
MURDOCK, JR.**

Petitioners

v.

**CITY OF JEANNETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually and
as Mayor of City of Jeannette, (Pennsylvania)**

Respondents

■

ON CERTIORARI

**TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE THIRD CIRCUIT**

Petitioners'

MOTION FOR REHEARING

MAY IT PLEASE THE COURT:

Now come petitioners in the above cause and present
this their motion for rehearing within the time prescribed
by the rules of the Court and, as grounds therefor, show:

Grounds

ONE

This Court erred in affirming the judgment of the Circuit Court of Appeals ordering the complaint dismissed by the District Court because the Court should have reversed the judgment of the Circuit Court of Appeals and modified the judgment of the District Court so as to permit the judgment of the District Court declaring the ordinance unconstitutional to stand under the *declaratory judgment statute* [Judicial Code Section 274 (d), 28 U. S. C. 400], and affirm the judgment of the District Court as modified, inasmuch as it is the duty of this Court, upon an appeal in equity, to render such decree as would have been proper for the District Court to render, especially in view of the fact that the ground of reversal was objected to by the Supreme Court of the United States *on its own motion* at the oral argument without an opportunity for counsel to be fully heard.

TWO

This Court erred in affirming the judgment of the Circuit Court of Appeals and ordering the complaint dismissed because the pleadings and evidence showed extraordinary circumstances of great, immediate, irreparable injury and loss from respondents' actions under color of the ordinance so as to require granting of the injunction sought to redress deprivation of rights secured by the Federal Constitution pursuant to the Civil Rights Act.

ARGUMENT

ONE

This Court erred in affirming the judgment of the Circuit Court of Appeals ordering the complaint dismissed by the District Court because the Court should have reversed the judgment of the Circuit Court of Appeals and modified the judgment of the District Court so as to permit the judgment of the District Court declaring the ordinance unconstitutional to stand under the *declaratory judgment statute* [Judicial Code Section 274 (d), 28 U. S. C. 400], and affirm the judgment of the District Court as modified, inasmuch as it is the duty of this Court, upon an appeal in equity, to render such decree as would have been proper for the District Court to render, especially in view of the fact that the ground of reversal was objected to by the Supreme Court of the United States *on its own motion* at the oral argument without an opportunity for counsel to be fully heard.

Upon an appeal in equity, the whole case is before the Court and this appellate Court can render in equity such a decree as under all of the circumstances was proper to be rendered and which should have been rendered by the District Court under all of the facts and circumstances.¹ In other words, this Court in the exercise of its appellate

¹ *United States v. Rio Grande Dam & Irrig. Co.*, 184 U. S. 416; *Dorchy v. Kansas*, 264 U. S. 286; *Watts W. & Co. v. Unione Austriaca de Navigazione*, 248 U. S. 9; *Patterson v. Mobile Gas Co.*, 271 U. S. 131; *Dainese v. Board of Public Works*, 91 U. S. 580; *Denver v. Denver Union Water Co.*, 246 U. S. 178; *Cincinnati v. Cincinnati & H. Traction Co.*, 245 U. S. 446; *Gulley v. Interstate Nat. Gas Co.*, 292 U. S. 16; *Mayo v. Lakeland Highland Canning Co.*, 309 U. S. 310; *Minnesota v. National Tea Co.*, 309 U. S. 551.

jurisdiction has power, not only to correct error in the judgment under review but also, to make such disposition of the case as justice and fairness to all the parties requires.²

In the case of *Patterson v. Mobile Gas Co.*, supra, this Court held that upon an appeal from an order enjoining the Public Service Commission from enforcing a confiscatory rate upon a gas company the Court may eliminate such provisions of the decree as are improvident and go materially beyond what the circumstances require, whether or not it announces correct conclusions of law.

Therefore the proper thing for this Court to do is to modify the judgment of the trial court eliminating the provision granting the injunction and to affirm that part of the judgment which declares the ordinance unconstitutional. This Court has held that the trial court had jurisdiction to entertain the controversy. There was presented under the declaratory judgment statute a justiciable controversy.

In *Nashville C. & St. L. Ry v. Wallace*, 288 U. S. 249, 259, this Court fully sustained the declaratory judgment procedure as a proper method of disposing of a controversy within the exercise of the judicial power of the district courts. Although that case involved the declaratory judgment statute of Tennessee, nevertheless this Court, in *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 240, affirmed this doctrine as to the Federal Declaratory Judgment Act.

The Federal Declaratory Judgment Act is merely a procedural statute which provides an additional remedy available in respect to justiciable controversies of which the Federal Courts otherwise have jurisdiction. The trial court had jurisdiction under and by virtue of the Civil Rights Act and Section 24 (14) of the Judicial Code. It is therefore available to petitioners.

² *Patterson v. Alabama*, 294 U. S. 630; *United States v. De Morant*, 124 U. S. 647; *Santa Fe County v. New Mexico*, 215 U. S. 296.

Petitioners requested the court to enter a declaratory judgment. In the complaint it is alleged, to wit, "Plaintiffs further pray that upon a final hearing this Court enter an order declaring said above described ordinance invalid and void under the Fourteenth Amendment to the Federal Constitution to which said ordinance is contrary and repugnant as construed and applied to plaintiffs' activities, and also declaring said ordinance void on its face because of vagueness and indefiniteness, and because it has been so construed and applied and will be so construed and applied by defendants to deprive plaintiffs and other of Jehovah's witnesses of their right to exercise and enjoy freedom to worship ALMIGHTY GOD in accordance with the dictates of conscience, and their 'civil rights' of freedom of speech, of press and of assembly." R. 14.

It was not necessary to specifically mention the Declaratory Judgment Act as the facts alleged in the complaint were sufficient to invoke it. In this connection see *Harr v. Pioneer Mechanical Corp'n*, 65 F. 2d 332, 335 (CCA-2d), where it was held that it was improper to dismiss a suit where facts alleged showed an *actual controversy* under the Declaratory Judgment Act. There the court said:

"... We think it was error to dismiss the bill for want of jurisdiction over what was called an action for declaratory judgment. The name given to the relief is of no particular moment. The controversy is clearly adverse and over matters which are justiciable in a District Court."

See also *Declaratory Judgments* (Borchard, 2d Ed. 1941), pages 764-767, 771-772, 780, 788-792, 1020-1022; *Nashville, Chattanooga & St. Louis Ry. Co. v. Wallace*, 288 U. S. 249, 264; *Texas v. Florida*, 306 U. S. 398; *Gulley v. Interstate Natural Gas Co.*, 82 F. 2d 145, 149; *Fosgate v. Kirkland*, 19 F. Supp. 152; *Stephenson v. Equitable Life*

Assur. Soc'y, 92 F. 2d 406, 408; *Pan American Petroleum Co. v. Chase National Bank*, 83 F. 2d 447.

These cases specifically hold that it is properly within the power of the federal courts to enter a declaratory judgment with respect to a state penal statute.

See also the enlightening article "Declaratory Judgment Under the New Rules of Civil Procedure" by Hon. Leon R. Yankwich, United States District Judge, Southern District of California, before Judicial Conference of Ninth Circuit at San Francisco, July 5-8, 1940, appearing in *Federal Rules Decisions*, Vol. 1, pages 295 et seq., citing cases holding that declaratory judgment jurisdiction should be generously exercised when construction of a penal or other state or federal statute is questioned by the citizen or official.

Since approval of the above mentioned Declaratory Judgment Act, Federal courts have repeatedly granted declaratory judgments, defining the rights of litigants with respect to constitutionality of legislative enactments. See

Lukens Steel Co. v. Perkins,

107 F. 2d 627

Imperial Irr. Dist. v. Nevada-Calif. Elec. Corp.,

111 F. 2d 319

Black v. Little,

8 F. Supp. 867

Penn v. Glenn,

10 F. Supp. 483

Vogt & Sons v. Rothensies,

11 F. Supp. 225

Montejano v. Rayner;

33 F. Supp. 435

Ordinances relating to sale of certain commodities and controlling competition in certain types of business have been subjects of declaratory judgments in Federal courts.

Publix Cleaners v. Florida Dry Cleaning
& Laundry Bd.,

32 F. Supp. 31 (SD Fla. 1940)

Roloff v. Purdue,

31 F. Supp. 739 (ND Iowa);

33 F. Supp. 513 (1940)

Curriu v. Wallace,

306 U. S. 1; 95 F. 2d 856

Bemis Bros. Bag Co. v. Feidelson,

13 F. Supp. 153 (WD Tenn. 1936)

Dartmouth Woolen Mills v. Myers,

15 F. Supp. 751 (N. H. 1936)

It is noticed that in the Declaratory Judgment Act it is said: "... the courts ... shall have power ... to declare rights and other legal relations ... whether or not further relief is or could be prayed."

Rule 57 of the *District Court Rules* among other things says: "The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."

In Borchard, *Declaratory Judgments*, supra, it is said:

"Constitutionality and validity being conceded, the construction and interpretation of statutes and ordinances and the question of their application to the plaintiff is a common quest of declaratory action. [Pages 788-789]

"Far more interesting are the cases in which the plaintiff, threatened with criminal penalty, tort liability, money payments, losses, or other risk of undesirable consequences, demands the construction or interpretation of the statute to the end of establishing his privilege or freedom from the threatened sanction. Thus, plaintiffs have sought declarations of their privilege to conduct a certain business or enterprise

free from the supposed restrictions of a statute or declarations that the statute did not make unlawful what they were undertaking to do; [citing cases] that they were either entitled to receive a license or permit or that their business required none; [citing cases] that they were free to sell or export free from official control, either because the statute was not observed [citing cases] or that the statute, properly construed, had no application to the plaintiff's business, either because it was not in force or because it was not intended to apply to the subject or object of the business in question and that the act, either by place, time, or circumstance, was privileged. [citing cases] [Pages 791-792]

"The criminal prosecution is at best a crude weapon of social control. While it may be the only instrument available to punish and exercise, if possible, the major offenses against society, it is quite unsuited to the more subtle adjustments of competition, business practice and regulation which mark the impact of modern industry and business on all classes of society. What is here needed is not the policeman's club but the arbitrator's and traffic manger's refinement and direction of legislative correctives in the light of social need. The criminal trial is hardly the forum for making such adjustments, and for arguing out the shadowy and movable line between the permissible and the unprivileged practice. Where nearly every administrative regulation or prohibition is accompanied by the sanction of a criminal penalty, when not enforced by permit, license or fine, it is possible to contrue it as a criminal or a civil control and it becomes a question of policy whether the interpretation of its usually broad terms should be committed to a criminal or a civil trial. This chapter [III] will be devoted to demonstrating, as many cases have already shown, the

social and individual advantage of substituting for the obloquy and humiliation of a public criminal prosecution and trial the more civilized forum of a suit for a declaratory judgment, under safeguarding conditions, on the issues arising between the administration and the citizen, to determine the validity of a statute, ordinance or regulation, and, if valid, the legitimacy and proper limits of a business practice affected by its terms.

"Business men, harassed by the enactment of new legislation and the threat of a district attorney that their conduct of their business violates the law and exposes them to criminal penalty, are faced with the alternative (a) of desisting from their challenged business or practice, (b) of a criminal trial, or (c) of an attempt to restrain the district attorney by injunction. Since injunctions are granted under limited circumstances only and not without reluctance against public officials, especially prosecuting attorneys, the business man's choice is practically limited to desisting or submitting to trial.

"This dilemma is likely to become more common as statutory police power and administrative commission continue to encroach upon and to control and govern the conduct of business.

"Yet, as has often been said, business men do not want to violate the law, with its penalties. What they wish is a clarification, a guide to the meaning of the law, so that they may avoid breaking it. Thurman Arnold has affirmed that in the enforcement of the anti-trust laws he conceives himself as a director of traffic, not a prosecutor of criminals.³ The question then is whether clarification can best be obtained in a criminal prosecution or in a civil proceeding, by de-

³ U. of Chicago, Law School Conferences on Public Law, June 12-13, 1939, p. 38.

claratory action. To say that equity will not restrain a criminal prosecution or interfere with the enforcement of the criminal law is merely to dodge the issue. We have seen in the federal administration of tax and customs laws, alcohol and other advertising, agreements in alleged restraint of trade, business which claims exemption from registration under the Securities and Exchange Commission and other regulatory commissions, a practice is growing to promulgate declaratory administrative opinions or rulings, with more or less conclusive effect, which shall at least afford a guide to business conduct, present or prospective.

"The substitution of the civil for the criminal forum in the adjudication of the validity of administrative controls and the legitimacy of business practices requires the making of a distinction between (a) an offense involving moral turpitude, *malum in se*, where there is little or no question of what the criminal law prohibits, and (b) business conducted by responsible men, subject to the continuing regulations and prohibitions, statutory and administrative, of a public control sanctioned by criminal penalty, at most *malum prohibitum*, where there is grave uncertainty as to what practices the general terms of a law prohibit."

[Pages 1020-1021]

Since the adoption of the federal act, many proceedings against state and federal officers seeking declarations of constitutionality, both of state⁴ and of federal⁵ statutes,

⁴ See *Wright v. Central Ky. Nat. Gas Co.*, 207 U. S. 537; *Curry v. McCannless*, 307 U. S. 357; *Sou. Pac. Co. v. Conway*, 115 F. 2d 746 (CCA 9); *Johnson v. Deerfield*, 25 F. Supp. 918 (D. Mass.); *Montejano v. Rayner*, supra; *Public Cleaners v. Florida Dry Cleaning & Laundry Board*, supra; *Starr v. Schram*, 24 F. Supp. 888 (E. D. Mich.); *State of Texas v. Anderson*, *Clayton & Co.*, 92 F. 2d 104 (CCA 5); *United States v. Standard Oil Co.*, 21 F. Supp. 645 (S. C. Cal.). [⁵ See next page]

and of the validity of state taxes,⁶ have been decided both by this Court,⁷ and by inferior federal courts,⁸ where the essentials of a justiciable controversy were presented to the Court.⁹ Indeed, the Committee Reports indicate that the Congress expected litigation respecting the constitutionality of legislation to be one of the uses to which the declaratory judgment procedure would be put.¹⁰

The device of a suit against a state officer to test the constitutionality of a state statute is perhaps the most characteristic feature of American constitutional law¹¹, and, indeed, seems specifically to have been contemplated by the Congress in the adoption of the Declaratory Judgments Act.¹²

⁶ *Currin v. Wallace*, supra; *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288; *Bowie v. Gonzales*, 117 F. 2d 11 (CCA 1); *Fosgate Co. v. Kirkland*, supra; *Fresno County v. Commodity Credit Corp.*, 112 F. 2d 639 (CCA 9); *John A. Gebeleis Inc. v. Melbourne*, 12 F. Supp. 105 (D. Md.); *Group Health Assn. v. Moor*, 24 F. Supp. 445 (D.C. Dist. Co.); *Penn. v. Glenn*, 10 F. Supp. 483 (W.D. Ky.); *Roloff v. Perdue*, supra; *Wallace v. Hudson-Duncan & Co.*, 98 F. 2d 985 (CCA 9).

⁶ *Texas v. Florida*, 306 U.S. 308; *Colorado Nat. Bank of Denver v. Bedford*, 310 U.S. 41; see also *Allen v. Regents of U. System of Ga.*, 304 U.S. 439; *Commodity Credit Corp. v. County of Okla.*, 36 F. Supp. 994 (W.D. Okla.); *Consolidation Coal Co. v. Martin*, 113 F. 2d 813 (CCA 6); *Gully v. Interstate Nat. Gas Co.*, supra; *Sancho v. Humacao Shipping Corp.*, 108 F. 2d 157 (CCA 1); *Thompson v. Louisiana*, 98 F. 2d 100 (CCA 8); *United States v. Query*, 37 F. Supp. 972 (E.D. S. Car.).

⁷ See cases cited, footnotes 4, 5 and 6, supra.

⁸ See cases cited in footnotes 4, 5 and 6, supra, and those collected in Borchard, *Declaratory Judgments*, supra, Chapter X, pp. 764, et seq.

⁹ Cf. *Electric Bond & Share Co. v. Securities & Exchange Com'n*, 303 U.S. 419; *United States v. West Virginia*, 295 U.S. 463; *Ashwander v. T. V. A.*, supra.

¹⁰ See Report of the House Committee on the Judiciary, 73d Congress, 2d Sess., Report No. 1264: "The declaratory judgment is a useful procedure in determining jural rights, obligations, and privileges, but may be applied to the ascertainment of almost any determinative fact or law. The declaration of a status was perhaps the earliest exercise of this procedure, such as the legality of marriage, the construction of written instruments, and the validity of statutes."

¹¹ See *Osborn v. Bank of the United States*, 9 Wheat. 738; *Ex parte Young*, 209 U.S. 123; *Poindexter v. Greenhow*, 114 U.S. 270; *Sou. Pac. Co. v. Conkey*, supra.

¹² *Ibid.*, footnote 10.

This Court has held that the complaint stated a cause of action within the jurisdiction of the District Court under the Civil Rights Act without an allegation that the amount exceeded three thousand dollars exclusive of interests and costs. Inasmuch as this Court found that the District Court had jurisdiction to entertain the "bill," then it was the duty of this Court to render such a judgment as in its opinion the District Court should have rendered under the Declaratory Judgment Act. This Court having declared the ordinance in question unconstitutional, as did the District Court, the judgment of the Court affirming the judgment of the Circuit Court of Appeals, should be set aside and held for naught and the judgment of the District Court modified so as to allow the declaratory judgment to stand and, as modified, this Court should order the same affirmed. This seems to be the only fair, equitable and right thing to do in the circumstances that the case was fully developed before the District Court and *especially in view of the fact that this Court decided this case on a question which was neither briefed nor argued by counsel.*

TWO

This Court erred in affirming the judgment of the Circuit Court of Appeals and ordering the complaint dismissed because the pleadings and evidence showed extraordinary circumstances of great, immediate, irreparable injury and loss from respondents' actions under color of the ordinance so as to require granting of the injunction sought to redress deprivation of rights secured by the Federal Constitution pursuant to the Civil Rights Act.

This Court ran ahead of the parties in the litigation and decided a point that was not necessary for this Court

to determine. If this Court would have reversed the judgment of the Circuit Court of Appeals on the ground that the ordinance was unconstitutional, as it has been declared to be by this Court, then the parties would have had their litigation settled on the questions which they chose to present to the Court. The question of whether or not a cause of action in equity had been established would not have been disposed of by this Court in the case and the reversal of the judgment without a discussion of "want of equity", therefore, would not have disturbed the law on that subject.

Since the Court has "gone out of its way" to decide the question, it now becomes necessary for counsel to consider the correctness of the conclusion reached by this court on the issue of whether or not a cause of action was established in equity.

The *propriety* and necessity of the contributory and voluntary action taken by this Court in closing the doors of the federal courts to Jehovah's witnesses in this type of controversy, without being called upon to do so, are also discussed.

The situation with which this Court was confronted in this case is identical with the situation presented in the case of *Pierce v. Society of Sisters*, 268 U. S. 510, 535-536, and the ruling of the Court in the instant case is directly contrary to the action taken in the case of *Pierce v. Society of Sisters*, supra. In that case the facts established did not present a case of clear, immediate and present danger of irreparable injuries, because the criminal statute had not become effective.

The Civil Rights Act [8 U. S. C. 43] provides, among other things, "Every person who, under color of any statute, ordinance . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Section 24 (14) [28 U. S. C. 41 (14)] among other things provides: "Of all suits at law or in equity authorized by law to be brought . . . to redress the deprivation, under color of any law, statute, ordinance . . . of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

It is manifest that the Civil Rights Act gives every person the right to resort to equity to redress the deprivation of "civil rights" by public officials under the guise of legislative enactment of a state or municipality. The purpose was to afford a remedy in the federal courts which should not be defeated by any technical rule of comity. The general rule prohibiting the federal courts from enjoining the wrongful enforcement and misapplication of state criminal statutes does not apply to that sort of action brought under the Civil Rights Act. The case of *Spielman Motor Co. v. Dodge*, 295 U. S. 95, and the authorities cited therein, together with scores of cases that have since been decided by the Court following that case does not apply here. Why? Because those cases involved only general constitutional rights secured by the *fourteenth amendment*, that is to say, property rights. Not one of the cases to be found in the reports where the Court has applied the rule announced in the *Dodge* case, *supra*, involved "civil rights". We submit that "civil rights" cases brought under the foregoing federal statutes cannot be defeated under the general rule announced in the *Dodge* case. Cf. *Hague v. C. I. O.*, 307 U. S. 496.

Beal v. Missouri Pac. Ry. Co., 312 U. S. 45, does not apply here because the facts and circumstances in the case at bar show "exceptional and extraordinary circumstances

and great, irreparable and immediate injury" to petitioners if the injunction is not granted. Furthermore that case does not apply here because to invoke the rule would defeat the purposes of the Civil Rights Act. It is not applicable for the reasons that *Spielman Motor Co. v. Dodge*, supra, is not applicable.

To enforce the strict rule of construction against the Civil Rights Act so as to permit its provisions to be overridden by the rule announced in the above *Dodge* case would be to defeat the very purpose and intent of Congress in passing the Civil Rights Act which conferred jurisdiction upon the United States District Courts in this sort of case. While the act did not enlarge the jurisdiction of the court it certainly did provide and was intended to provide relief in federal courts to protect citizens deprived of civil rights in the circumstances shown in the case at bar.

It is therefore our position that it is not necessary to show "exceptional circumstances or reasons" in civil rights actions to the same extent as is required in injunctions brought to protect property rights secured by the Federal Constitution.

But assuming, for the purposes of argument, that the same degree of "exceptional circumstances or reasons" must be shown in civil-right cases as in property-right cases, the trial court properly granted the injunction because the facts and circumstances of the case clearly establish "extraordinary circumstances of danger of great and immediate irreparable injury and loss" so as to require the intervention of a federal court of equity to restrain the enforcement of the ordinance in question.

It is now well settled by decisions of the Court that where civil rights are being constantly denied by repetitious arrests, prosecutions and convictions under an ordinance which is either void on its face or, even though valid, is contrived and applied so as to deny persons their civil rights, federal courts will grant an injunction under the

Civil Rights Act of 1870 as amended in 1871 [28 U. S. C. 41 (14)], to redress the deprivation of said civil rights and to enjoin future interference therewith.

In recent years the first step in that direction was the case of *Hague v. C. I. O.*; 101 F. 2d 774-791, affirmed, 307 U. S. 496.

In that *Hague* case this Court said:

"The ordinance has been administered in an unconstitutional manner.

"But even if we were to assume that the ordinance of Jersey City under consideration is valid and constitutional, none the less we find that it has been administered in a discriminatory and therefore unconstitutional manner. . . .

§ "Such conduct on the part of the appellants is in violation of the due process clause of the Fourteenth Amendment. The criterion imposed by the authorities of Jersey City upon the right to speak therein is simply whether or not the individual who is to speak is a right thinking person in view of those who constitute the city authorities. No other test is applied. The authorities upon this subject are very clear. In *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U. S. 350, 352, Mr. Justice McReynolds, delivering the opinion of the Supreme Court, stated: 'The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.

"We think that an American community, devoted to American principles, cannot exist upon the terms offered by the appellants. Minorities, however unpopular, must be allowed to make their voices heard and the whipping up of public indignation and public clamor to the end that free expression of opinion and free as-

sembly may not be had sits with little grace upon the officials of an American city. Fundamental civil liberties must not be tampered with if our system of democratic government is to survive."

In this connection, let the Court bear in mind that what is sought here is not to restrain prosecutions now pending in the state courts. Petitioners admit that they are not entitled to enjoin pending prosecutions. (*Cline v. Frink Dairy Co.*, 274 U. S. 445) What petitioners ask is to restrain threatened future enforcement and repeated arrests and prosecutions under the ordinance in question. This relief is warranted under the cases above referred to. See, also, *Cline v. Frink Dairy Co.*, supra.

In *Nashville C. & St. L. Ry. Co. v. McConnell*, 82 F. 65, 70, the court said:

"The very fact that a right has been violated, and that this violation is constantly going on, and that a court of law cannot, in damages, compensate the injury or stop the wrong, furnishes the best possible reason for interference by court of equity."

See, also, *Dearborn Publishing Co. v. Fitzgerald*, 271 F. 479, where the court said:

"Defendants' action, however, prevents other sales from time to time and from week to week. This is a continuing course of conduct, and, if not supported by a valid constitutional law or is in excess of authority conferred on them by any valid law or ordinance, becomes a continuing and repeated wrong. In this situation a court of equity has from time immemorial granted relief."

In recent months other federal courts have granted injunctions restraining enforcement of ordinances very similar to this one, as applied to Jehovah's witnesses, to which

we refer here without argument, because to do so would be 'gilding the lily', as such opinions contain complete argument in favor of the right of Jehovah's witnesses to an injunction in this case.¹³

Many other federal courts have granted injunctions in favor of Jehovah's witnesses restraining ordinances similar to this, but in which cases no opinions were written,¹⁴ and the cases recently terminated by granting of permanent injunction in favor of Jehovah's witnesses restraining enforcement of like ordinances of three other municipalities, to wit, Beaufort, S. C., Ardmore, Okla., and Green Forest, Ark.

The case of *Reid v. Borough of Brookville et al.*, 39 F. Supp. 30, is in point here. In that case the United States District Judge in granting the injunction in favor of Jehovah's witnesses restraining the enforcement of an ordinance said: "It may be noted, however, that the instant cases differ from those cited [*Lovell v. City of Griffin*, 303 U. S. 444; *Schneider v. Irvington*, 308 U. S. 147; *Cantwell v. Connecticut*, 310 U. S. 296] in that the latter were appeals from State courts, while the plaintiffs herein are seeking injunctions against threatened future enforcement of the ordinances against Jehovah's witnesses, but not upon any prior convictions against them. This difference in situation is of no moment, owing to the continuing nature of the acts of the defendants. Ordinarily a court of equity will not

¹³ *Barnette v. West Virginia State Board*, 47 F. Supp. 251; *Onley v. City of Oklahoma City*, 120 F. 2d 861; *Lynch v. Muskogee* [Okla.] 47 F. Supp. 589; *Kennedy v. City of Moscow* [Idaho], 39 F. Supp. 26; *Zimmermann v. Village of London* [Ohio], 38 F. Supp. 582; *Beeler v. Smith* [Harlan, Ky.] et al., 40 F. Supp. 139; *Reid v. Brookville* [Pa.], 39 F. Supp. 30; *Donley v. City of Colorado Springs*, 40 F. Supp. 15; *Borchert v. Rahger* [Texas] et al., 42 F. Supp. 577.

¹⁴ *Widie v. City of Harrison*, Arkansas Federal District Court, Western Dist., granted January 9, 1941; *Roe v. City of North Little Rock*, Arkansas Federal Dist. Ct., Eastern Dist., granted January 27, 1941; *Mickey v. City of Excelsior Springs*, Missouri Federal Dist. Ct., Western Dist., granted January 9, 1941; *Roberts v. City of Hot Springs*, Arkansas Federal Dist. Ct., Western Dist., granted May 8, 1941; *Dalloa v. City of Atlantic City*, New Jersey Federal Dist. Ct., granted October 11, 1940.

intervene to enjoin procedure under criminal statutes, but will do so to prevent continuing invasion of property or constitutional rights. *Terrace v. Thompson*, 263 U. S. 197; *Hague v. C. I. O.*, et al., 307 U. S. 496. Appeals from the Court of the Burgess of the borough, through the courts of the State to the Supreme Court of the United States would not furnish prompt and complete relief under the circumstances of the instant case."

The continuing activity of Jehovah's witnesses in the distribution of literature, with each act of which distribution money contribution is received, constituted (according to respondents) a separate alleged violation of the ordinance; therefore the act of respondents in continuing to arrest petitioners is a continuing act in violation of petitioners constitutional rights, constantly going on, and which cannot be compensated in money damages. The Court has held that *civil rights* are incapable of money valuation. *Hague v. C. I. O.*; 307 U. S. 496.

The courts have universally held that an injunction is properly granted in order to preserve the property rights of the plaintiff.

There are many other instances in which injunctions have been granted to restrain enforcement of ordinances and statutes interfering with civil rights and property rights of citizens contrary to the United States Constitution.¹⁵

¹⁵ *Grosjean v. American Press Co.*, 297 U. S. 233; *Ex parte Young*, supra; *Pierce v. Society of Sisters*, 268 U. S. 510, 535-536; *Swift & Co. v. United States*, 276 U. S. 311; *Vicksburg Waterworks v. Vicksburg*, 185 U. S. 65, 82; *Greene v. Louisville & J. R. Co.*, 244 U. S. 490, 506-508, 520-521; *Sterling v. Constantin*, 287 U. S. 378, 393, 403-404; *Fidelity & Deposit Co. v. Tufoya*, 270 U. S. 426, 434; *Work v. Louisiana*, 269 U. S. 250, 254; *Colorado v. Toll*, 268 U. S. 228, 230; *Cline v. Frink Dairy Co.*, supra; *Moore v. Fidelity & Deposit Co.*, 272 U. S. 317; *Adams v. Tanner*, 244 U. S. 590; *Kennington v. Palmer*, 255 U. S. 100; *Truax v. Raich*, 239 U. S. 33, 219 F. 273; *Dobbins v. Los Angeles*, 195 U. S. 223, 241; *Terrace v. Thompson*, 263 U. S. 197; *Ludwig v. Western Union*, 216 U. S. 146; *Western Union Tel. Co. v. Andrews*, 216 U. S. 165; *Ex parte Bransford*, 310 U. S. 354, 361.

For protection of the rights of petitioners and other of Jehovah's witnesses it is necessary that respondents be enjoined from instituting actions under the ordinance which the trial court held to be unconstitutional as applied to petitioners and other of Jehovah's witnesses, because immediate and irreparable injury is shown.

Nashville, C. & St. L. Ry. Co. v. McConnell,
supra

Dearborn Pub. Co. v. Fitzgerald,
271 F. 479

Johnson v. Wells Fargo,
239 U. S. 234

Respondents have actually committed the overt criminal act of foully arresting and wrongfully prosecuting Jehovah's servants, ordained ministers of Almighty God, and depriving them, wrongfully, of their civil rights. Where, as here, is shown the overt act of repeated prosecution under a particular legislative enactment, such constitutes "circumstantial evidence" which proves immediate and imminent injury and damage.

The undisputed evidence and express admissions from the witness stand on the part of respondents show express and undeniable threats to continue to prosecute under the particular ordinance any of Jehovah's witnesses found distributing literature and simultaneously receiving money contributions.

Here the lives, reputation, property, family, liberty and civil rights of petitioners are at stake and at the mercy of respondents. They are deprived of their rights of freedom of speech, press and worship, arrested, prosecuted, convicted, forced again and again to appeal such convictions, entailing huge burdens of labor and expense to defend their lawful exercise of constitutionally secured rights. It is impossible to compensate these things with money. Petitioners and other of their society's representatives are denied their

liberty by continuous incarceration which cannot be compensated by money. Their reputation as upright, God-fearing and order-loving residents of the state is "blackened" by the prosecutions. All the wealth and property in the world does its owner no good whatever if he is wrongfully deprived of his liberty and incarcerated behind four walls. His liberty, and especially his civil liberty, is more highly cherished and desired than his property.

Facts in the case at bar are in sharp contrast to those of the cases relied upon by respondents. Petitioners here are lawfully engaged in a continuous course of conduct which respondents allege to be continuous violation committed under the ordinances.

Federal courts have the power to restrain enforcement of a valid statute which is being enforced in an unconstitutional manner.¹⁶

Due process of law is not confined to invasion of rights through denial of procedural steps in state courts. The fact that courts are open in the state with fair procedure to protect rights does not prevent local officials from threatening to act and acting so as to deny one his inherent civil rights. Wrongful use of statute so as to infringe such constitutional rights is sufficient showing under "due process". The procedural steps are often followed completely and explicitly in the state courts and yet on the merits through conviction one is denied his constitutional rights.

This question urged by this Court has been squarely answered by the Court itself in cases dealing with the jurisdiction of the statutory *three-judge court* involving state statutes. In *Greene v. Louisville & I. R. Co.*, 244 U. S. 499, 506-508, it is said:

¹⁶ *Borchert v. Ranger*, supra; *Lynch v. Muskogee*, supra; *Barnette v. West Virginia State Board of Educ'n*, supra; *Oney v. City of Oklahoma City*, supra; *Sterling v. Constantin*, supra; *Greene v. L. & I. Ry. Co.*, supra; *Concordia Fire Ins. Co. v. Illinois*, 292 U. S. 535, 545; *Colorado v. Toll*, supra.

"The principle is not confined to the maintenance of suits for restraining the enforcement of statutes which as enacted by the state legislature are in themselves unconstitutional. *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, 390, was a case not of an unconstitutional statute, but of confiscatory, and therefore unconstitutional, action taken by a state commission under a constitutional statute. The court, by Mr. Justice Brewer, said:

"Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal Court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual."

See also *Sterling v. Constantin*, 287 U. S. 378, 393, where the court said:

"Nor does the fact that it may appear that the state officer in such a case, while acting under color of state law, has exceeded the authority conferred by the state, deprive the three-judge court of jurisdiction. *Iowa Des Moines Bank v. Bennett*, 284 U. S. 239, 246; *Fidelity & Deposit Co. v. Tafoya*, 270 U. S. 426, 434.

"As the validity of provisions of the state constitution and statutes, if they could be deemed to authorize the action of the governor, was challenged, the application for injunction was properly heard by three judges. *Stratton v. St. Louis Southwestern Ry. Co.*,

282 U. S. 10. The jurisdiction of the District Court so constituted and of this court upon appeal extends to every question involved whether of state or federal law, and enables the court to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case. *Siler v. Louisville & Nashville Ry. Co.*, 213 U. S. 175, 191, 298, 303; *Davis v. Wallace*, 257 U. S. 478, 482; *Waggoner Estate v. Wichita County*, 273 U. S. 113, 116."

See *Fidelity & Deposit Co. v. Tafoya*, 270 U. S. 426, 434, stating:

"It is suggested that the District Court had no jurisdiction because the bill does not allege that the statute is unconstitutional, but only that the statute as construed and applied by the defendants is so. But even if the statute did not plainly purport to justify and require the threatened action, or if the bill fairly taken did not import a denial of the constitutionality of the law as applied to this case, the plaintiff still would be entitled to come into a court of the United States to prevent such an alleged violation of its constitutional rights."

In this same connection see *Lee v. Bickell*, 292 U. S. 415.

Please note that paragraph 14 of Section 24 of the Judicial Code *does not* say "redress the deprivation under statutes unconstitutional on their face or unconstitutional as construed; but it allows jurisdiction where the alleged deprivation is "under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution".

Federal courts have repeatedly held that the right to urge a defense in the prosecution of a criminal action brought in the state courts, in which the unconstitutionality

of an ordinance can there be urged, does not constitute an adequate remedy at law sufficient to warrant denial of an injunction where there is shown clear and present danger of irreparable injury from threatened future enforcement.

The Circuit Court of Appeals, in *Hague v. C. I. O.*, supra, said:

"The appellants contend that the appellees have a full and adequate remedy at law and that therefore the causes of action set up in the bill of complaint are not cognizable in equity. In our opinion this contention cannot be sustained. The record shows a shocking and constant disregard of the basic civil rights of the appellees by the appellants. These acts were torts and their threatened continuance is sufficient ground for the equitable relief sought and granted. *Terrace v. Thompson*, 263 U. S. 197; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1, 11, 12; *Osborn & Co. v. Missouri Pac. Ry. Co.*, 147 U. S. 248, 258."

In *Terrace v. Thompson*, 263 U. S. 197, the court said:

"They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights. The complaint presents a case in which equitable relief may be had if the law complained of is shown to be in contravention of the Federal Constitution."

Here such showing was made to the satisfaction of the trial court, which rightly granted the relief asked.

In *Petroleum Exploration, Inc. v. Public Service Comm. of Ky.*, 304 U. S. 209, the court said:

"The injury which flows from the threat of enforcement of an allegedly unconstitutional, regulatory state statute with penalties so heavy as to forbid the risk of

challenge in proceedings to enforce it is generally recognized as irreparable and sufficient to justify an injunction."

In *Railroad and Warehouse Comm. of Minnesota et al. v. Duluth St. Ry. Co.*, 273 U. S. 625, 628, the court said:

"Where as here a constitutional right is insisted on we think it would be unjust to put the plaintiff to the chances of possibly reaching the desired result by an appeal to the State court when at least it is possible that, as we have said, it would find itself too late if it afterwards went to the District Court of the United States. *Pac. Tel. & Telegr. Co. v. Kuykendall*, 265 U. S. 196. *Okla. Natural Gas Co. v. Russell*, 261 U. S. 290."¹⁷

In *Smyth v. Ames*, 169 U. S. 466, at pp. 516, 517, the Court said as follows:

"So whenever a citizen of a State can go into the Courts of a State to defend his property against the illegal acts of its officers, a citizen of another state may invoke the jurisdiction of the Federal courts to maintain a like defence. A State cannot tie up a citizen of another State, having property rights within its territory invaded by unauthorized acts of its own officers, to suits for redress in its own courts; *Regan v. Farmers Loan and Trust Co.*, 154 U. S. 362, 391; *Mississippi Mills v. Cohn*, 150 U. S. 202, 204; *Cowles v. Mercer Co.*, 7 Wall, 118; *Lincoln County v. Luning*, 133 U. S. 529; *Scott v. Neely*, 140 U. S. 106; *Chicot County v. Sherwood*, 148 U. S. 529; *Gates v. Allen*, 149 U. S. 451."

¹⁷ See also: *Stratton v. St. L. & S. W. Ry. Co.*, 284 U. S. 530, 534; *Risley v. Chicago, R. I. & P. Ry. Co.*, 270 U. S. 378, 388; *Terrace v. Thompson*, supra; *American Life Ins. Co. v. Stewart*, 300 U. S. 203, 214-216; *Petroleum Exploration v. Public Service Comm.*, supra.

In *New Hampshire Gas & Electric Co. v. Morse*, 42 F. 2d 90-93, District Judge Morris, speaking for the statutory three-judge court, held that the right of appeal from an order of the public service commission, committing the plaintiff's agents for contempt was not an adequate remedy at law because such remedy was not enforceable in the federal court, and concluded by granting injunction in favor of the plaintiffs, restraining the unconstitutional action of the state officials, and quoted further from *Smyth v. Ames*, *supra*, as follows:

"The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a federal court is not to be conclusively determined by the statutes of the particular state in which suit may be brought. One who is entitled to sue in the federal circuit court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action."

On this same question Judge Morris in the above case for the statutory three-judge court said as follows:

"When the jurisdiction of a federal court of equity attaches, it is governed by its own rules of procedure and not by those prevailing in the state jurisdiction."

"It is not reasonable to hold that a person must violate a law and subject himself to possible fines or imprisonment in order to contest the constitutionality of a statute authorizing the imposition of a penalty. Threats of the constituted authorities are sufficient to set in motion an action to contest such rights. Western

Union Telegraph Co. v. Andrews, 216 U. S. 165, 30 S. Ct. 286, 54 L. Ed. 430."

In *American Life Ins. Co. v. Stewart*, 300 U. S. 203 at pages 214, 216, the same principle was announced and the following additional statement made:

"It must be a remedy which may be resorted to without impediment created otherwise than by the act of the party. . . . The remedy at law cannot be adequate if its adequacy depends upon the will of the opposing party. *Bank of Kentucky v. Stone*, 88 F. 383; *Lincoln Nat. Life Ins. Co. v. Hammer*, 41 F. (2) 12, 16."

To the same effect is *Atlas Ins. Co. v. Southern, Inc.*, 306 U. S. 563, 569, which cites the following cases: *Risty v. Chicago R. I. & P. Ry. Co.*, 270 U. S. 378, 388; *De Giovanni v. Camden Fire Ins. Assn.*, 296 U. S. 64, 69; *Petroleum Exploration Inc. v. Public Service Comm.*, supra.

It is manifest that the remedy in an appeal to the state courts is not equally as clear and adequate and sufficient as the remedy provided through injunction. The very fact that Jehovah's witnesses have spent large sums in cash and have incurred and suffered damages by reason of the unlawful proceedings prosecuted by respondents, is proof positive that an adequate remedy at law does not exist.

Furthermore, the Civil Rights Act does not require showing of lack of adequate remedy at law as a condition precedent.

Additionally, the adequate remedy at law contemplated is an adequate remedy at law in Federal courts and not State courts; and it is admitted that no adequate remedy at law in the Federal courts exists.

It is noticed that this Court says: "In any event, an injunction looks to the future", as though this were ground for denying an injunction. Of course, everyone knows that

an injunction looks to the future, but it is certainly not grounds for denying an injunction, for this Court held in the case of *Cline v. Frink Dairy*, supra, that a federal court could enjoin "future prosecutions". The judgment of the District Court in the *Cline* case was modified, striking out that part of the judgment which enjoined prosecution of pending indictments in the state district court at Denver. Insofar as a question of clear and present danger of irreparable injury is concerned, the facts in the *Cline v. Frink Dairy* case, supra, are identical with the facts in the case at bar.

The point that has been entirely overlooked by the Court in this case is that great injury will be inflicted on the lawful, constitutionally-safeguarded practice or "business" of petitioners, which is preaching the Gospel of God's Kingdom, and which practice stands on the same high level with the dairy business involved in the *Cline* case, supra, and the operation of the parochial schools in the case of *Pierce v. Society of Sisters*, supra.

In conclusion this Court seizes upon the proposition for ground to deny the injunction:

"And in view of the decision rendered *today* . . . we find no ground for supposing that the intervention of a federal court, in order to secure petitioners' constitutional rights, will be either necessary or appropriate."

[Italics added]

This certainly is an irrelevant and immaterial statement and grafts a new theory onto civil procedure in federal courts, to wit, that an appellate court can view the facts differently from the trial after the case has been decided by the appellate court, in determining whether or not an injunction should have been granted by the trial court. There is only one view that this Court can take toward the facts in this case and that is this, to wit,

What were the circumstances that existed on and prior to February 21, 1941, and May 13, 1941?

and NOT,

What are the facts and circumstances as they exist on May 3, 1943?—two years after the evidence was developed in the District Court.

This Court has uniformly held to the policy of looking at the record as it existed before the court below at the time the relief was awarded.

This Court says as grounds for holding that "want of equity" was found to exist in the case: "But the court made no finding of threatened irreparable injury to petitioners or others". It was not necessary for the Court to make this finding. It would have been appropriate to do so in the circumstances, because the record and evidence shows that there was near and present danger of irreparable injury. The record and evidence establishes the fact of great and irreparable injury to the "business" of petitioners, to wit, preaching the Gospel of God's Kingdom, and it must be presumed by this Court that sufficient findings were made to support the judgment of the court below. The failure of the trial court to make a formal finding to this effect is not ground to deny the rights of Jehovah's witnesses and especially is no justification for this Court to "go out of its way" to reverse the judgment of the District Court in this case.

It has uniformly been the rule—established by this Court for many years—that if nothing to the contrary appears in the record, every reasonable intendment may be and ought to be made in favor of the validity and correctness of the judgment under review.¹⁸ The line of cases holding that the district court is presumed not to have

¹⁸ *Morgan v. Daniels*, 153 U.S. 120; *Rogers v. United States*, 141 U.S. 548.

jurisdiction unless the contrary appears,¹⁹ rest on the fact that the federal district courts are not courts of "general" jurisdiction, but are courts of "limited" jurisdiction. However, this rule does not apply to whether or not a cause of action in equity is established. The presumption is that the trial court did not abuse its discretion and that the trial court found sufficient and adequate facts and good cause for the rendering of the judgment.

It is respectfully submitted that it is not proper in the circumstances disclosed in this case for this Court to substitute its discretion for that of the trial court.

In the case of *Pierce v. Society of Sisters*, supra, the evidence of "clear and immediate irreparable" injury was not nearly as strong as the evidence here. This Court could have easily declined to sustain the injunction on the same ground in that case as was done here *without prior invitation*. The *Society of Sisters* case is authority here and conclusively sustains the position taken on this motion by petitioners.

Before this motion is concluded it is suggested that it would be more in keeping with this Court's policy of liberality and fairness to counsel and litigants to have suggested to counsel in advance of oral argument that the Court wanted to hear argument on the issue of "want of equity". This was done in the case of *Jamison v. Texas*, 318 U. S. , (63 S. Ct. 669), on the jurisdictional question; and in the case of *Great Lakes Dredge & Dock Co. v. Chavlet* (No. 849, October Term 1942), now under consideration by this Court, on the question of whether or not the declaratory judgment procedure was available to the petitioners in that case. If this Court holds that the declaratory judgment procedure was available to petitioners in that proceeding, then, *a fortiori*, the First Ground of this motion should be sustained and the judgment of May 3, 1943, in this cause set aside and held for naught.

¹⁹ *Citizens Bank v. Cannon*, 164 U. S. 319.

CONCLUSION

Wherefore, petitioners pray that the order and judgment heretofore entered affirming the judgment of the Circuit Court of Appeals below be set aside and held for naught, and that on the briefs of the parties and the supporting argument herein this motion for rehearing be granted and the Court here render an order reversing the judgment of the Circuit Court of Appeals and affirming the judgment of the trial court; or, in the alternative, modify the judgment of the district court and, as modified, affirm the same.

If this relief cannot be granted on the motion for rehearing without oral argument, then petitioners pray that the Court order this cause to be reargued orally.

Petitioners pray for such other relief as they may show themselves justly entitled to in the premises.

ROBERT L. DOUGLAS
ALBERT R. GUNDECKER
EARL KALKBRENNER
CARROL CHRISTOPHER
VICTOR SWANSON
NICHOLAS KODA
CHARLES SEDERS
ROBERT LAMBORN
ROBERT MURDOCK, JR.

By HAYDEN C. COVINGTON
Attorney for Petitioners

CERTIFICATE

I, Hayden C. Covington, do hereby certify that the foregoing motion for rehearing is prepared and filed in good faith so that justice may be done and not for the purpose of delay.

HAYDEN C. COVINGTON
Attorney for Petitioners

SUPREME COURT OF THE UNITED STATES.

No. 450.—OCTOBER TERM, 1942.

Robert L. Douglas, Albert R. Gun-	}	On Writ of Certiorari to the	
decker, Earl Kalkbrenner, et al.,			United States Circuit Court
Petitioners,			of Appeals for the Third
vs.			Circuit.
City of Jeanette (Pennsylvania), a			
Municipal Corporation, et al.			

[May 3, 1943.]

Mr. Chief Justice STONE delivered the opinion of the Court.

Petitioners brought this suit in the United States District Court for Western Pennsylvania to restrain threatened criminal prosecution of them in the state courts by respondents, the City of Jeanette (a Pennsylvania municipal corporation) and its Mayor, for violation of a city ordinance which prohibits the solicitation of orders for merchandise without first procuring a license from the city authorities and paying a license tax. The ordinance as applied is held to be an unconstitutional abridgement of free speech, press and religion in Nos. 480-487, *Murdock et al. v. Pennsylvania*, decided this day. The questions decisive of the present case are whether the district court has statutory jurisdiction as a federal court to entertain the suit, and whether petitioners have by their pleadings and proof established a cause of action in equity.

The case is not one of diversity of citizenship, since some of the petitioners, like respondents, are citizens of Pennsylvania. The bill of complaint alleges that the named plaintiffs are Jehovah's Witnesses, persons who entertain religious beliefs and engage in religious practices which it describes; that the suit is a class suit brought in petitioners' own behalf and in behalf of all other Jehovah's Witnesses in Pennsylvania and adjoining states to restrain respondents from enforcing ordinance No. 60 of the City of Jeanette against petitioners and all other Jehovah's Witnesses because, as applied to them, the ordinance abridges the guaranties of freedom of speech, press, and religion of the First Amendment made applicable to the states by the Fourteenth.

The suit is alleged to arise under the Constitution and laws of the United States, including the Civil Rights Act of 1871. The complaint sets up that in the practice of their religion and in conformity to the teachings of the Bible, Jehovah's Witnesses make, and for many years have made, house to house distribution, among the people of the City of Jeanette, of certain printed books and pamphlets setting forth the Jehovah's Witnesses' interpretations of the teachings of the Bible. Municipal Ordinance No. 60 provides: "That all persons canvassing or soliciting within said Borough (now City of Jeannette) orders for goods, wares or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, without first procuring a license and paying prescribed license taxes, shall be punished by fine not exceeding \$100 and costs, or if the fine is not paid, by imprisonment from five to thirty days. It is alleged that in April, 1939, respondents arrested and prosecuted petitioners and other Jehovah's Witnesses for violation of the ordinance because of their described activities in distributing religious literature, without the permits required by the ordinance, and that respondents threaten to continue to enforce the ordinance by arrests and prosecution—all in violation of petitioners' civil rights.

No preliminary or interlocutory injunction was granted but the district court, after a trial, held the ordinance invalid, 39 F. Supp. 32, on the authority of *Reid v. Borough of Brookville*, 39 F. Supp. 30, in that it deprived petitioners of the rights of freedom of press and religion guaranteed by the First and Fourteenth Amendments. The court enjoined respondents from enforcing the ordinance against petitioners and other Jehovah's Witnesses.

The Court of Appeals for the Third Circuit sustained the jurisdiction of the district court, but reversed on the merits, 130 F. 2d 652, on the authority of *Jones v. Opelika*, 316 U. S. 584. One judge dissented on the ground that the complaint did not sufficiently allege a violation of the Due Process Clause of the Fourteenth Amendment so as to entitle petitioners to relief under the Civil Rights Act. We granted certiorari, 318 U. S. —, and set the case for argument with Nos. 480-487, *Murdock et al. v. Pennsylvania*, *supra*.

We think it plain that the district court had jurisdiction as a federal court to hear and decide the question of the constitutional

validity of the ordinance, although there was no allegation or proof that the matter in controversy exceeded \$3,000. By 8 U. S. C. § 43 (derived from § 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, continued without substantial change as R. S. § 1979) it is provided that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

As we held in *Hague v. C. I. O.*, 307 U. S. 496, 507-14, 527-32, the district courts of the United States are given jurisdiction by 28 U. S. C. § 41 (14) over suits brought under the Civil Rights Act without the allegation or proof of any jurisdictional amount. Not only do petitioners allege that the present suit was brought under the Civil Rights Act, but their allegations plainly set out an infringement of its provisions. In substance, the complaint alleges that respondents, proceeding under the challenged ordinance, by arrest, detention and by criminal prosecutions of petitioners and other Jehovah's Witnesses, had subjected them to deprivation of their rights of freedom of speech, press and religion secured by the Constitution, and the complaint seeks equitable relief from such deprivation in the future.

The particular provision of the Constitution on which petitioners rely is the Due Process Clause of the Fourteenth Amendment, violation of which the dissenting judge below thought was not sufficiently alleged to establish a basis for relief under the Civil Rights Act. But we think this overlooks the special relationship of the Fourteenth Amendment to the rights of freedom of speech, press, and religion guaranteed by the First. We have repeatedly held that the Fourteenth Amendment has made applicable to the states the guaranties of the First. *Schneider v. State*, 308 U. S. 147, 169, n. 8 and cases cited; *Jamison v. Texas*, 318 U. S. —. Allegations of fact sufficient to show deprivation of the right of free speech under the First Amendment are sufficient to establish deprivation of a constitutional right guaranteed by the Fourteenth, and to state a cause of action under the Civil Rights Act, whenever it appears that the abridgment of the right is effected under color of a state statute or ordinance. It follows that the bill, which amply alleges the facts relied on to show the abridgment

by criminal proceedings under the ordinance; sets out a case or controversy which is within the adjudicatory power of the district court.

Notwithstanding the authority of the district court, as a federal court, to hear and dispose of the case, petitioners are entitled to the relief prayed only if they establish a cause of action in equity. Want of equity jurisdiction, while not going to the power of the court to decide the cause, *Di Giovanni v. Camden Ins. Assn.*, 296 U. S. 64, 69; *Pennsylvania v. Williams*, 294 U. S. 176, 181-82, may nevertheless, in the discretion of the court, be objected to on its own motion. *Twist v. Prairie Oil Co.*, 274 U. S. 684, 690; *Pennsylvania v. Williams*, *supra*, 185. Especially should it do so where its powers are invoked to interfere by injunction with threatened criminal prosecutions in a state court.

The power reserved to the states under the Constitution to provide for the determination of controversies in their courts may be restricted by federal district courts only in obedience to Congressional legislation in conformity to the Judiciary Article of the Constitution. Congress, by its legislation, has adopted the policy, with certain well defined statutory exceptions, of leaving generally to the state courts the trial of criminal cases arising under state laws, subject to review by this Court, of any federal questions involved. Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent; and equitable remedies infringing this independence of the states—though they might otherwise be given—should be withheld if sought on slight or inconsequential grounds. *Di Giovanni v. Camden Ins. Assn.*, *supra*, 73; *Matthews v. Rodgers*, 284 U. S. 521, 525-26; cf. *United States ex rel. Kennedy v. Tyler*, 269 U. S. 13; *Massachusetts State Grange v. Benton*, 272 U. S. 525.

It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. *Davis & Farnum Mfg. Co. v. Los Angeles*,

189 U. S. 207; *Fenner v. Boykin*, 271 U. S. 240. Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger of irreparable injury "both great and immediate." *Spelman Motor Co. v. Dodge*, 295 U. S. 89, 95, and cases cited; *Bigl v. Missouri Pacific R. Co.*, 312 U. S. 45, 49, and cases cited; *Watson v. Buck*, 313 U. S. 387; *Williams v. Miller*, 317 U. S. 599.

The trial court found that respondents had prosecuted certain of petitioners and other Jehovah's Witnesses for distributing the literature described in the complaint without having obtained the license required by the ordinance, and had declared their intention further to enforce the ordinance against petitioners and other Jehovah's Witnesses. But the court made no finding of threatened irreparable injury to petitioners or others, and we cannot say that the declared intention to institute other prosecutions is sufficient to establish irreparable injury in the circumstances of this case.

Before the present suit was begun, convictions had been obtained in the state courts in cases Nos. 480-487, *Murdock et al. v. Pennsylvania*, *supra*, which were then pending on appeal and which were brought to this Court for review by certiorari contemporaneously with the present case. It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith, or that a federal court of equity by withdrawing the determination of guilt from the state courts could rightly afford petitioners any protection which they could not secure by prompt trial and appeal pursued to this Court. In these respects the case differs from *Hague v. C. I. O.*, *supra*, 501-02, where local officials forcibly broke up meetings of the complainants and in many instances forcibly deported them from the state without trial.

There is no allegation here and no proof that respondents would not, nor can we assume that they will not, acquiesce in the decision of this Court holding the challenged ordinance unconstitutional.

as applied to petitioners. If the ordinance had been held constitutional, petitioners could not complain of penalties which would have been but the consequence of their violation of a valid state law.

Nor is it enough to justify the exercise of the equity jurisdiction in the circumstances of this case that there are numerous members of a class threatened with prosecution for violation of the ordinance. In general the jurisdiction of equity to avoid multiplicity of civil suits at law is restricted to those cases where there would otherwise be some necessity for the maintenance of numerous suits between the same parties involving the same issues of law or fact. It does not ordinarily extend to cases where there are numerous parties and the issues between them and the adverse party—here the state—are not necessarily identical. *Matthews v. Rodgers, supra*, 529-30, and cases cited. Far less should a federal court of equity attempt to envisage in advance all the diverse issues which could engage the attention of state courts in prosecutions of Jehovah's Witnesses for violations of the present ordinance, or assume to draw to a federal court the determination of those issues in advance, by a decree saying in what circumstances and conditions the application of the city ordinance will be deemed to abridge freedom of speech and religion.

In any event, an injunction looks to the future. *Texas Co. v. Brown*, 258 U. S. 466, 474; *Standard Oil Co. v. United States*, 283 U. S. 163, 182. And in view of the decision rendered today in Nos. 480-487, *Murdock et al. v. Pennsylvania, supra*, we find no ground for supposing that the intervention of a federal court, in order to secure petitioners' constitutional rights, will be either necessary or appropriate.

For these reasons, establishing the want of equity in the cause, we affirm the judgment of the circuit court of appeals directing that the bill be dismissed.

Affirmed.

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SUPREME COURT OF THE UNITED STATES.

Nos. 450, 480-487, 238.—OCTOBER TERM, 1942.

Robert L. Douglas, Albert R. Gundecker, Earl Kalkbrenner, et al., Petitioners,	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
450 vs. City of Jeannette (Pennsylvania), a municipal corporation, et al.		
Robert Murdock, Jr., Petitioner,	}	On Writs of Certiorari to the Superior Court of the Commonwealth of Pennsylvania.
480 vs. Commonwealth of Pennsylvania (City of Jeannette).		
Anna Perisich, Petitioner,		
481 vs. Commonwealth of Pennsylvania (City of Jeannette).		
Willard L. Mowder, Petitioner,		
482 vs. Commonwealth of Pennsylvania (City of Jeannette).		
Charles Seders, Petitioner,		
483 vs. Commonwealth of Pennsylvania (City of Jeannette).		
Robert Lamborn, Petitioner,		
484 vs. Commonwealth of Pennsylvania (City of Jeannette).		
Anthony Maltezos, Petitioner,	}	On Appeal from the Supreme Court of the State of Ohio.
485 vs. Commonwealth of Pennsylvania (City of Jeannette).		
Anastasia Tzanes, Petitioner,		
486 vs. Commonwealth of Pennsylvania (City of Jeannette).		
Ellaine Tzanes, Petitioner,		
487 vs. Commonwealth of Pennsylvania (City of Jeannette).	}	
Thelma Martin, Appellant,		
238 vs. City of Struthers, Ohio.		

[May^o 3, 1943.]

Mr. Justice JACKSON.

Except the case of *Douglas et al. v. Pennsylvania*, all of these cases are decided upon the record of isolated prosecutions in which information is confined to a particular act of offense and to the behavior of an individual offender. Only the *Douglas* record gives a comprehensive story of the broad plan of campaign employed

by Jehovah's Witnesses and its full impact on a living community. But the facts of this case are passed over as irrelevant to the theory on which the Court would decide its particular issue. Unless we are to reach judgments as did Plato's men who were chained in a cave so that they saw nothing but shadows we should consider the facts of the *Douglas* case at least as an hypothesis to test the validity of the conclusions in the other cases. This record shows us something of the strings as well as the marionettes. It reveals the problem of those in local authority when the right to proselyte comes in contact with what many people have an idea is their right to be let alone. The Chief Justice says for the Court in *Douglas* that "in view of the decision rendered today in Nos. 480-487, *Murdock et al. v. Pennsylvania*, *supra*, we find no ground for supposing that the intervention of a federal court, in order to secure petitioners' constitutional rights, will be either necessary or appropriate," which could hardly be said if the constitutional issues presented by the facts of this case are not settled by the *Murdock* case. The facts of record in the *Douglas* case and their relation to the facts of the other cases seem to me worth recital and consideration if we are realistically to weigh the conflicting claims of rights in the related cases today decided. ^o

From the record in *Douglas v. City of Jeannette* we learn:

In 1939, a "Watch Tower Campaign" was instituted by Jehovah's Witnesses in Jeannette, Pennsylvania, an industrial city of some 16,000 inhabitants.¹ Each home was visited, a bell was rung or the door knocked upon, and the householder advised that the Witness had important information. If the householder would listen, a record was played on the phonograph. Its subject was "Snare and Racket." The following words are representative of its contents: "Religion is wrong and a snare because it deceives the people, but that does not mean that all who follow religion are willingly bad. Religion is a racket because it has long been used and is still used to extract money from the people."

¹ Sixteenth Annual Census of the United States (1940), Population, Volume I (Census Bureau of the United States Department of Commerce) p. 922. The City of Jeannette is included in Westmoreland County, shown by the 1940 Census to have a population of 303,411, an increase over 1930 and 1920: *Ibid.* The 1936 Census of Religious Bodies shows that of the people in Westmoreland County 168,608 were affiliated with some religious body; 80,276 of them with the Roman Catholic Church. Census of Religious Bodies (1936), Volume I (Census Bureau of the United States Department of Commerce) pp. 809-814. According to unpublished information in the files of the Census Bureau, the 1936 Census of Religious Bodies, shows that there were in the City of Jeannette 5,520 Roman Catholics. Thus it appears that the percentage of Catholics in the City is somewhat higher than in the County as a whole.

upon the theory and promise that the paying over of money to a priest will serve to relieve the party paying from punishment after death and further insure his salvation." This line of attack is taken by the Witnesses generally upon all denominations, especially the Roman Catholic. The householder was asked to buy a variety of literature for a price or contribution. The price would be twenty-five cents for the books and smaller sums for the pamphlets. Oftentimes, if he was unwilling to purchase, the book or pamphlet was given to him anyway.

When this campaign began, many complaints from offended householders were received, and three or four of the Witnesses were arrested. Thereafter, the "zone servant" in charge of the campaign conferred with the Mayor. He told the Mayor it was their right to carry on the campaign and showed him a decision of the United States Supreme Court, said to have that effect, as proof of it. The Mayor told him that they were at liberty to distribute their literature in the streets of the city and that he would have no objection if they distributed the literature free of charge at the houses, but that the people objected to their attempt to force these sales, and particularly on Sunday. The Mayor asked whether it would not be possible to come on some other day and to distribute the literature without selling it. The zone servant replied that that was contrary to their method of "doing business," and refused. He also told the Mayor that he would bring enough Witnesses into the City of Jeannette to get the job done whether the Mayor liked it or not. The Mayor urged them to await the outcome of an appeal which was then pending in the other cases and let the matter take its course through the courts. This, too, was refused, and the threat to bring more people than the Mayor's police force could cope with was repeated.

On Palm Sunday of 1939, the threat was made good. Over 100 of the Witnesses appeared. They were strangers to the city and arrived in upwards of twenty-five automobiles. The automobiles were parked outside the city limits, and headquarters were set up in a gasoline station with telephone facilities through which the director of the campaign could be notified when trouble occurred. He furnished bonds for the Witnesses as they were arrested. As they began their work, around 9:00 o'clock in the morning, telephone calls began to come in to the Police Headquarters, and complaints in large volume were made all during the day. They

exceeded the number that the police could handle, and the Fire Department was called out to assist. The Witnesses called at homes singly and in groups, and some of the homes complained that they were called upon several times. Twenty-one Witnesses were arrested. Only those were arrested where definite proof was obtainable that the literature had been offered for sale or a sale had been made for a price. Three were later discharged for inadequacies in this proof, and eighteen were convicted. The zone servant furnished appeal bonds.

The national structure of the Jehovah's Witness movement is also somewhat revealed in this testimony. At the head of the movement in this country is the Watch Tower Bible & Tract Society, a corporation organized under the laws of Pennsylvania, but having its principal place of business in Brooklyn, N. Y. It prints all pamphlets, manufactures all books, supplies all phonographs and records, and provides other materials for the Witnesses. It "ordains" these Witnesses by furnishing each, on a basis which does not clearly appear, a certificate that he is a minister of the Gospel. Its output is large and its revenues must be considerable. Little is revealed of its affairs. One of its "zone servants" testified that its correspondence is signed only with the name of the corporation and anonymity as to its personnel is its policy. The assumption that it is a "non-profit charitable" corporation may be true, but it is without support beyond mere assertion. In none of these cases has the assertion been supported by such usual evidence as a balance sheet or an income statement. What its manufacturing costs and revenues are, what salaries or bonuses it pays, what contracts it has for supplies or services we simply do not know. The effort of counsel for Jeannette to obtain information, books and records of the local "companies" of Witnesses engaged in the Jeannette campaign in the trial was met by contradictory statements as to the methods and meaning of such meager accounts as were produced.

The publishing output of the Watch Tower corporation is disposed of through converts, some of whom are full-time and some part-time ministers. These are organized into groups or companies under the direction of "zone servants." It is their purpose to carry on in a thorough manner so that every home in the communities in which they work may be regularly visited three or four times a year. The full-time Witnesses acquire their literature from the Watch Tower Bible & Tract Society at a figure

which enables them to distribute it at the prices printed thereon with a substantial differential. Some of the books they acquire for 5¢ and dispose of for a contribution of 25¢. On others, the margin is less. Part time ministers have a differential between the 20¢ which they remit to the Watch Tower Society and the 25¢ which is the contribution they ask for the books. We are told that many of the Witnesses give away a substantial quantity of the literature to people who make no contributions. Apart from the fact that this differential exists and that it enables the distributors to meet in whole or in part their living expenses, it has proven impossible in these cases to learn the exact results of the campaigns from a financial point of view. There is evidence that the group accumulated a substantial amount from the differentials, but the tracing of the money was not possible because of the failure to obtain records and the failure, apparently, to keep them.

The literature thus distributed is voluminous and repetitious. Characterization is risky, but a few quotations will indicate something of its temper.

Taking as representative the book "Enemies," of which J. F. Rutherford, the lawyer who long headed this group, is the author, we find the following: "The greatest racket ever invented and practiced is that of religion. The most cruel and seductive public enemy is that which employs religion to carry on the racket, and by which means the people are deceived and the name of Almighty God is reproached. There are numerous systems of religion, but the most subtle, fraudulent and injurious to humankind is that which is generally labeled the 'Christian religion,' because it has the appearance of a worshipful devotion to the Supreme Being, and thereby easily misleads many honest and sincere persons."

Id. at 144-145. It analyzes the income of the Roman Catholic hierarchy and announces that it is "the great racket, a racket that is greater than all other rackets combined." *Id.* at 178. It also says under the chapter heading "Song of the Harlot," "Referring now to the foregoing Scriptural definition of *harlot*: What religious system exactly fits the prophecies recorded in God's Word? There is but one answer, and that is: The Roman Catholic Church organization." *Id.* at 204-205. "Those close or nearby and dependent upon the main organization, being of the same stripe, picture the Jewish and Protestant clergy and other allies of the Hierarchy who tag along behind the Hierarchy at the present time

to do the bidding of the old 'where'. *Id.* at 222. "Says the prophet of Jehovah: 'It shall come to pass in that day, that Tyre (modern Tyre, the Roman Catholic Hierarchy organization) shall be forgotten. Forgotten by whom? By her former illicit paramours who have committed fornication with her.'" *Id.* at 224.

Throughout the literature statements of this kind appear amidst scriptural comment and prophecy, denunciation of demonology, which is used to characterize the Roman Catholic religion, criticism of government and those in authority, advocacy of obedience to the law of God instead of the law of man, and an interpretation of the law of God as they see it.

The spirit and temper of this campaign is most fairly stated perhaps in the words, again of Rutherford, in his book "Religion," p. 196-198:

"God's faithful servants go from house to house to bring the message of the kingdom to those who reside there, omitting none, not even the houses of the Roman Catholic Hierarchy, and there they give witness to the kingdom because they are commanded by the Most High to do so. 'They shall enter in at the windows like a thief.' They do not loot nor break into the houses, but they set up their photographs before the doors and windows and send the message of the kingdom right into the houses into the ears of those who might wish to hear; and while those desiring to hear are hearing, some of the 'scourges' are compelled to hear. Locusts invade the homes of the people and even eat the varnish off the wood and eat the wood to some extent. Likewise God's faithful witnesses, likened unto locusts, get the kingdom message right into the house and they take the veneer off the religious things that are in that house, including candles and 'holy water', remove the superstition from the minds of the people, and show them that the doctrines that have been taught to them are wood, hay and stubble, destructible by fire, and they cannot withstand the heat. The people are enabled to learn that 'purgatory' is a bogeyman, set up by the agents of Satan to frighten the people into the religious organizations, where they may be fleeced of their hard-earned money. Thus the kingdom message plagues the religionists, and the clergy find that they are unable to prevent it. Therefore, as described by the prophet, the message comes to them like a thief that enters in at the windows; and this message is a warning to those who are of the world that Jesus Christ has come, and they remember his warning words, to wit: 'Behold, I come as a thief.' (Revelation 16:15) The day of Armageddon is very close, and that day comes upon the world in general like a thief in the night."

The day of Armageddon, to which all of this is prelude, is to be a violent and bloody one, for then shall be slain all "demonology."

gists," including most of those who reject the teachings of Jehovah's Witnesses.

In the *Murdock* case, on another Sunday morning of the following Lent, we again find the Witnesses in Jeannette, travelling by twos and threes and carrying cases for the books and phonographs. This time eight were arrested, as against the 21 arrested on the preceding Palm Sunday involved in the *Douglas* case.

In the *Struthers* case we find the Witness knocking on the door of a total stranger at 4:00 on Sunday afternoon, July 7th. The householder's fourteen year old son answered, and, at the Witness's request, called his mother from the kitchen. His mother had previously become "very much disgusted about going to the door" to receive leaflets, particularly since another person had on a previous occasion called her to the door and told her, as she testified, "that I was doomed to go to hell because I would not let this literature in my home for my children to read." She testified that the Witness "shoved" in the door "the circular being distributed," and that she "couldn't do much more than take" it, and she promptly tore it up in the presence of the Witness, for while she believed "in the worship of God," she did not "care to talk to everybody" and did not "believe that anyone needs to be sent from door to door to tell us how to worship." The record in the *Struthers* case is even more sparse than that in the *Murdock* case, but the householder did testify that at the time she was given the circular the Witness "told me that a number of them were in jail and would I call the Chief of Police and ask that their workers might be released."

Such is the activity which it is claimed no public authority can either regulate or tax. This claim is substantially, if not quite,

This reads as follows:

"RELIGION AS A WORLD REMEDY. The Evidence in Support Thereof. Hear JUDGE RUTHERFORD, Sunday, July 28, 4 P. M., E. S. T. FREE, All Persons of Goodwill Welcome, FREE. Columbus Coliseum, Ohio State Fair Grounds. [on one side]

"1940's Event of Paramount Importance To You! What is it? THE QUINQUAGENNIAL CONVENTION OF JEHOVAH'S WITNESSES. Five Days—July 24-28—Thirty Cities. All Lovers of Righteousness—Welcome! The strange fate threatening all 'Christendom' makes it imperative that you COME and HEAR the public address on 'RELIGION AS A WORLD REMEDY: The Evidence in Support Thereof,' by Judge Rutherford at the COLISEUM OF THE OHIO STATE FAIR GROUNDS, Columbus, Ohio, Sunday, July 28, at 4 p. m., E. S. T. 'He that hath an ear to hear' will come to one of the auditoriums of the convention cities listed below, tied in with Columbus by direct wire. Some of the 30 cities are [21 are listed]. For detailed information concerning these conventions write WATCHTOWER CONVENTION COMMITTEE, 117 Adams St., Brooklyn, N. Y." [on the other side]

sustained today. I dissent—a disagreement induced in no small part by the facts recited.

As individuals many of us would not find this activity seriously objectionable. The subject of the disputes involved may be a matter of indifference to our personal creeds. Moreover, we work in offices affording ample shelter from such importunities and live in homes where we do not personally answer such calls and bear the burden of turning away the unwelcome. But these observations do not hold true for all. The stubborn persistence of the officials of smaller communities in their efforts to regulate this conduct indicates a strongly held conviction that the Court's many decisions in this field are at odds with the realities of life in those communities where the householder himself drops whatever he may be doing to answer the summons to the door and is apt to have positive religious convictions of his own.³

Three subjects discussed in the opinions in *Murdock v. Pennsylvania* and *Martin v. Struthers* tend to obscure the effect of the decisions. The first of these relates to the form of the ordinances in question. One cannot determine whether this is mere makeweight or whether it is an argument addressed to the constitutionality of the ordinances; and whatever it is, I cannot reconcile the treatment of the subject by the two opinions. In *Murdock* the Court says "the present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations," and again "the ordinance is not narrowly drawn to prevent or control abuses or evils arising from solicitation from house to house." It follows the recent tendency to invalidate ordinances in this general field that are not "narrowly drawn."

But in *Struthers* the ordinance is certainly narrowly drawn. Yet the Court denies the householder the narrow protection it gives. The city points out that this ordinance was narrowly drawn to meet a particular evil in that community where many men must work nights and rest by day. I had supposed that our question, except in respect to ordinances invalid on their face, is always whether the ordinance as applied denies constitutional rights. Nothing in the Constitution says or implies that real rights are more vulnerable to a narrow ordinance than to a broad one. I think our func-

³ Compare Chafee, *Freedom of Speech* (1941) p. 407: "I cannot help wondering whether the Justices of the Supreme Court are quite aware of the effect of organized front-door intrusions upon people who are not sheltered from zealots and impostors by a staff of servants or the locked entrance of an apartment house."

tion is to take municipal ordinances as they are construed by the state courts and applied by local authorities and to decide their constitutionality accordingly, rather than to undertake censoring their draftsmanship.

Secondly, in neither opinion does the Court give clear-cut consideration to the particular activities claimed to be entitled to constitutional immunity, but in one case blends with them conduct of others not in question, and in the other confuses with the rights in question here certain alleged rights of others which these petitioners are in no position to assert as their own.

In the *Murdock* case the Court decides to "restore to their high, constitutional position the liberties of itinerant evangelists." That it does without stating what those privileges are, beyond declaring that "This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits." How can we dispose of the questions in this case merely by citing the unquestioned right to minister to congregations voluntarily attending services?

Similarly, in the *Struthers* case the Court fails to deal with the behavior of the Witnesses on its own merits. It reaches its decision by weighing against the ordinance there in question not only the rights of the Witness but also "the right of the individual householder to determine whether he is willing to receive her message"; concludes that the ordinance "substitutes the judgment of the community for the judgment of the individual householder"; and decides the case on the basis that "he submits the distributor to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is in fact glad to receive it." But the hospitable householder thus thrown in the balance with the Witness to make weight against the city ordinance is wholly hypothetical and the assumption is contrary to the evidence we have recited. Doubtless there exist fellow spirits who welcome these callers, but the issue here is what are the rights of those who do not and what is the right of the community to protect them in the exercise of their own faith in peace. That issue—the real issue—~~seems~~ not to be dealt with.

Third, both opinions suggest that there are evils in this conduct that a municipality may do something about. But neither identifies it; nor lays down any workable guide in so doing. In *Murdock* the Court says that "the ordinance is not narrowly drawn to

prevent or control abuses or evils arising" from house-to-house solicitation. What evils or abuses? It is also said in *Murdock* that we "have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities." What more? The fee of course. But we are told the fee is not "a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question." Is it implied that such a registration for such a fee would be valid? Wherein does the suggestion differ from the ordinance we are striking down? This ordinance did nothing more, it did not give discretion to refuse the license nor to censor the literature. The fee ranged from \$1.50 a day for one day to less than a dollar a day for two weeks. There is not a syllable of evidence that this amount exceeds the cost to the community of policing this activity. If this suggestion of new devices is not illusory, why is the present ordinance invalid? The City of *Struthers* decided merely that one with no more business at a home than the delivery of advertising matter should not obtrude himself farther by announcing the fact of delivery. He was free to make his distribution if he left the householder undisturbed, to take it up in his own time. The Court say the City has not even this much leeway in ordering its affairs, however complicated they may be as the result of round-the-clock industrial activity. If the local authorities must draw closer aim at evils than they did in these cases I doubt that they ever can hit them. What narrow area of regulation exists under these decisions? The *Struthers* opinion says, "the dangers of distribution can so easily be controlled by traditional legal methods." It suggests that the city may "by identification devices control the abuse of the privilege of criminals posing as canvassers." Of course to require registration and license is one of the few practical "identification devices." Merely giving one's name and his address to the authorities would afford them basis for investigating who the strange callers are and what their record has been. And that is what *Murdock* prohibited the city from asking. If the entire course of concerted conduct revealed to us is antiunion, I should think it neither fair nor wise to throw out to the cities encouragement to try new restraints. If some part of it passes the boundary of immunity, I think we should say what part and why in these cases we are denying the right to regulate it. The suggestion in *Struthers* that "the pro-

lem must be worked out by each community for itself" is somewhat ironical in view of the fate of the ordinances here involved.

Our difference of opinion cannot fairly be given the color of a disagreement as to whether the constitutional rights of Jehovah's Witnesses should be protected in so far as they are rights. These Witnesses, in common with all others, have extensive rights to proselyte and propagandize. These of course include the right to oppose and criticize the Roman Catholic Church or any other denomination. These rights are, and should be held to be, as extensive as any orderly society can tolerate in religious disputation. The real question is where their rights end and the rights of others begin. The real task of determining the extent of their rights on balance with the rights of others is not met by pronouncement of general propositions with which there is no disagreement.

If we should strip these vases to the underlying questions, I find them too difficult as constitutional problems to be disposed of by a vague but fervent transcendentalism.

In my view the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well. When limits are reached which such communications must observe, can one go farther under the cloak of religious evangelism? Does what is obscene, or commercial, or abusive, or inciting become less so if employed to promote a religious ideology? I had not supposed that the rights of secular and non-religious communications were mere narrow or in any way inferior to those of avowed religious groups.

It may be asked why then does the First Amendment separately mention free exercise of religion? The history of religious persecution gives the answer. Religion needed specific protection because it was subject to attack from a separate quarter. It was often claimed that one was an heretic and guilty of blasphemy because he failed to conform in mere belief or in support of prevailing institutions and theology. It was to assure religious teaching as much freedom as secular discussion, rather than to assure a greater license, that led to its separate statement.

The First Amendment grew out of an experience which taught that society cannot trust the conscience of a majority to keep its religious zeal within the limits that a free society can tolerate. I do not think it any more intended to leave the conscience of a

minority to fix its limits. Civil government can not let any group ride roughshod over others simply because their "consciences" tell them to do so.

A common-sense test as to whether the Court has struck a proper balance of these rights is to ask what the effect would be if the right given to these Witnesses should be exercised by all sects and denominations. If each competing sect in the United States went after the householder by the same methods, I should think it intolerable. If a minority can put on this kind of drive in a community, what can a majority resorting to the same tactics do to individuals and minorities? Can we give to one sect a privilege that we could not give to all, merely in the hope that most of them will not resort to it? Religious freedom in the long run does not come from this kind of license to each sect to fix its own limits, but comes of hard-headed fixing of those limits by neutral authority with an eye to the widest freedom to proselyte compatible with the freedom of those subject to proselyting pressures.

I cannot accept the holding in the *Murdock* case that the behavior revealed here "occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits." To put them on the same constitutional plane seems to me to have a dangerous tendency towards discrediting religious freedom.

Neither can I think it an essential part of freedom that religious differences be aired in language that is obscene, abusive, or inciting to retaliation. We have held that a Jehovah's Witness may not call a public officer a "God damned racketeer" and a "damned Fascist," because that is to use "fighting words," and such are not privileged. *Chaplinsky v. New Hampshire*, 315 U. S. 568. How then can the Court today hold it a "high constitutional privilege" to go to homes, including those of devout Catholics on Palm Sunday morning, and thrust upon them literature calling their church a "whore" and their faith a "racket"?

For am I convinced that we can have freedom of religion only by denying the American's deep-seated conviction that his home is a refuge from the pulling and hauling of the market place and the street. For a stranger to corner a man in his home, summon

* Compare *Valentine v. Chrestensen*, 316 U. S. 52, permitting a ban on distribution of a handbill containing a civic appeal on one side and a commercial advertisement on the other.

him to the door and put him in the position either of arguing his religion or of ordering one of unknown disposition to leave is a questionable use of religious freedom.⁵

I find it impossible to believe that the *Struthers* case can be solved by reference to the statement that "The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance." I doubt if only the slothfully ignorant wish repose in their homes, or that the forefathers intended to open the door to such forced "enlightenment" as we have here.

In these cases, local authorities caught between the offended householders and the drive of the Witnesses, have been hard put to keep the peace of their communities. They have invoked old ordinances that are crude and clumsy for the purpose. I should think that the singular persistence of the furmoil about Jehovah's Witnesses, one which seems to result from the work of no other sect, would suggest to this Court a thorough examination of their methods to see if they impinge unduly on the rights of others. Instead of that the Court has, in one way after another, tied the hands of all local authority and made the aggressive methods of this group the law of the land.

This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added. So it was with liberty of contract, which was discredited by being overdone. The Court is adding a new privilege to override the rights of others to what has before been regarded as religious liberty. In so doing it needlessly creates a risk of discrediting a wise provision of our Constitution which protects all—those in homes as well as those out of them—in the peaceful, orderly practice of the religion of their choice but which gives no right to force it upon others.

Civil liberties had their origin and must find their ultimate guaranty in the faith of the people. If that faith should be lost, five or nine men in Washington could not long supply its want. Therefore we must do our utmost to make clear and easily understandable the reasons for deciding these cases as we do. Forthright observance of rights presupposes their forthright definition.

I think that the majority has failed in this duty. I therefore dissent in *Murdock* and *Struthers* and concur in the result in *Douglas*.

I join in the opinions of Mr. Justice REED in *Murdock* and *Struthers*, and in that of Mr. Justice FRANKFURTER in *Murdock*.

Mr. Justice FRANKFURTER joins in these views.